

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

PHILLIP WAYNE KOGER,

Plaintiff,

vs.

GREGGORY CARSON, Individually;)
STEPHEN BAGLEY, Individually;)
TODD COOK, Individually;)
JAMES DAVIS, Individually;)
DYLON FLOYD, Individually; and)
ANTHONY LAWSON, Individually,)

Defendants.)



ORIGINAL

CIVIL ACTION FILE
NO. 4:18-CV-00053-HLM

THE DEPOSITION OF
TODD COOK
JUNE 20, 2019

DEBRA L. HUNTOON, LCR
ANGEL & ASSOCIATES COURT REPORTERS, INC.
POST OFFICE BOX 1145
HIXSON, TENNESSEE 37343
(423) 876-4435

1 APPEARANCES:

2 FOR THE PLAINTIFF:

3 HEATHER G. PARKER, ESQUIRE
4 MICHAEL HIBDON, ESQUIRE
5 BULLOCH FLY HORNSBY & EVANS
6 302 NORTH SPRING STREET
7 MURFREESBORO TN 37133

8 FOR DEFENDANT, GREGGORY CARSON:

9 JANIE PARKS VARNELL, ESQUIRE
10 DAVIS & HOSS
11 850 FORT WOOD STREET
12 CHATTANOOGA TN 37403

13 FOR DEFENDANTS, STEPHEN BAGLEY,
14 JAMES DAVIS, DYLAN FLOYD:

15 KEVIN R. STONE, ESQUIRE
16 FREEMAN MATHIS & GARY
17 100 GALLERIA PARKWAY, SUITE 1600
18 ATLANTA GA 30339

19 FOR DEFENDANT, TODD COOK:

20 JAMES F. EXUM, III, ESQUIRE
21 CHAMBLISS BAHNER & STOPHEL
22 605 CHESTNUT STREET, SUITE 1700
23 CHATTANOOGA TN 37450

24 FOR DEFENDANT, ANTHONY LAWSON:

25 GWENDOLYN HAVLIK, ESQUIRE
DREW ECKL & FARNHAM
303 PEACHTREE STREET NE, SUITE 3500
ATLANTA GA 30308

ALSO PRESENT:

GREGGORY CARSON, DEFENDANT

I N D E X

| | Page |
|---|------|
| The Deposition of TODD COOK | |
| Direct Examination by Ms. Parker..... | 5 |
| Cross Examination by Ms. Varnell..... | 62 |
| Redirect Examination by Ms. Parker..... | 67 |

E X H I B I T S

| Number | Description | Page |
|--------|--|------|
| 1 | Photograph..... | 44 |
| 2 | Photographs (collective)..... | 45 |
| 3 | Photograph..... | 50 |
| 4 | Photograph..... | 51 |
| 5 | Photograph..... | 52 |
| 6 | Photographs (collective)..... | 52 |
| 7 | Photograph..... | 53 |
| 8 | Photograph..... | 55 |
| 9 | Photograph..... | 55 |
| 10 | Photographs (collective)..... | 59 |
| 11 | Defendant Todd Cook's Answers to Plaintiff's First Set of Interrogatories and Request for Production of Documents..... | 69 |

1 The deposition of TODD COOK, the Defendant,
2 called as a witness at the instance of the Plaintiff,
3 for use pursuant to the Federal Rules of Civil
4 Procedure, taken on the 20th day of June, 2019, at the
5 offices of Davis & Hoss, 850 Fort Wood Street,
6 Chattanooga, Tennessee 37403, before Debra L. Huntoon,
7 Licensed Court Reporter and Notary Public, pursuant to
8 the stipulation of counsel.

9 The deposition is being taken by agreement
10 of counsel for the Plaintiff and the Defendants. It is
11 agreed that the deposition shall be taken in machine
12 shorthand by Debra L. Huntoon, Licensed Court Reporter
13 and Notary Public, that the witness may be sworn by the
14 said Licensed Court Reporter, and that the signature of
15 the witness to the completed deposition is waived.

16 It is further agreed that all formalities
17 as to caption, notice, certificate, and mode of
18 transmission are waived, and that the deposition is
19 taken subject to the usual exceptions as to
20 irrelevancy, incompetency, and immateriality, which are
21 reserved to the hearing of the cause, except as to the
22 form of the question.

1 TODD COOK,
2 the Defendant, called as a witness at the instance of
3 the Plaintiff, having been first duly sworn, was
4 examined and deposed as follows:

5 DIRECT EXAMINATION

6 BY MS. PARKER:

7 **Q. Officer Cook, I'm going to go over some**
8 **standard stuff with you first.**

9 **Have you ever given a deposition before?**

10 A. Yes.

11 **Q. Okay. So you know to make sure you answer**
12 **out loud, try not to answer with a head nod, things**
13 **like that.**

14 A. Yes.

15 **Q. If I ask you a question that you don't**
16 **understand, just ask me to repeat it or I'll change the**
17 **way I word it if I need to. Okay?**

18 A. Okay.

19 **Q. You're not currently under any medicines or**
20 **drugs or alcohol that would make it where you couldn't**
21 **answer truthfully today?**

22 A. No.

23 **Q. Would you state your name, please?**

24 A. Todd Cook.

25 **Q. Is it okay if I call you Officer Cook?**

1 A. That's fine.

2 Q. Officer Cook, how are you currently
3 employed?

4 A. Hamilton County Sheriff's Office.

5 Q. And how long have you been there?

6 A. Twenty-four years.

7 Q. And what's your position with the sheriff's
8 office?

9 A. Traffic investigator.

10 Q. What does that mean for, like, your typical
11 daily duties?

12 A. I investigate wrecks daily and do
13 enforcement, wrecks being parking lot fender-benders to
14 fatals and everything in between.

15 Q. As an employee with the Hamilton County
16 Sheriff's Office, you've received training, I assume?

17 A. In?

18 Q. Just generally as a --

19 A. Yes.

20 Q. -- police officer.

21 A. Oh, yes.

22 Q. We've learned already that there are certain
23 trainings that you have to do every year, is that
24 correct?

25 A. Correct.

1 **Q. And use of force training is one of those**
2 **required trainings every year?**

3 A. It's -- we do in-service training. We don't
4 necessarily train in use of force every year. We do
5 defensive tactic type stuff every year.

6 **Q. So explain that to me. What is that? What**
7 **is defensive tactic? What's that like?**

8 A. It's just different types of defensive
9 tactics that we would use, using our hands and
10 intermediate weapons.

11 **Q. Is that something where you typically go,**
12 **like, hands-on in the training with someone or is it --**

13 A. Yes.

14 **Q. -- like, a written book?**

15 A. Hands-on.

16 **Q. Okay. Do you have any specialized training**
17 **or certifications outside of just what the standard --**

18 A. No.

19 **Q. -- training procedures are?**

20 A. (Moves head side to side.)

21 **Q. Are you familiar with Hamilton County's use**
22 **of force policies?**

23 A. Yes.

24 **Q. Do you know whether or not there's a policy**
25 **or training instruction that instructs you when you**

1 **should intervene in another officer's use of force?**

2 A. Yes.

3 **Q. And what -- tell me what that policy is.**

4 A. I'm not exactly sure how it's worded.

5 **Q. Okay. What's your understanding of -- when**
6 **would it be your job essentially to intervene in**
7 **someone else's -- in another officer's use of force**
8 **with a suspect?**

9 MR. EXUM: Object to form. You may answer.

10 THE WITNESS: In my opinion, if it's -- if
11 what I'm seeing is inappropriate.

12 BY MS. PARKER:

13 **Q. Have you ever had to do that in your**
14 **twenty-four years with the sheriff's department?**

15 A. No.

16 **Q. Did you know Phillip Koger before**
17 **March 8th, 2017?**

18 A. No.

19 **Q. On March 8th, 2017, when did you find out**
20 **that the suspect that the officers were engaging with**
21 **was Phillip Koger?**

22 A. After everything was over with, after he was
23 identified.

24 **Q. So after he had been arrested that night?**

25 A. Yes.

1 **Q.** **Okay. At what point did you enter the**
2 **pursuit of Mr. Koger?**

3 A. I'm sorry? At what point did --

4 **Q.** **Did you enter the pursuit of Mr. Koger.**

5 A. It was on Highway 41, I believe, in Catoosa
6 County.

7 **Q.** **Did you see when Mr. Koger's car came to a**
8 **stop?**

9 A. Yes.

10 **Q.** **Okay. When was the first time you**
11 **physically were able to see Mr. Koger?**

12 A. When I got out of my car and ran up to where
13 he was at.

14 **Q.** **Where was he whenever you approached the**
15 **vehicle?**

16 A. He was on the ground.

17 **Q.** **Okay. Tell me what it was like. Who --**
18 **what officers were there? What did you see?**

19 A. The other officers that were there were from
20 other agencies. I don't know them. But there were
21 four or five or six officers around him trying to
22 subdue him.

23 **Q.** **Was he already handcuffed when you arrived?**

24 A. No.

25 **Q.** **Did you assist in putting handcuffs on him?**

1 A. No.

2 Q. At any point when he was -- well, tell me
3 where he was in relation to the vehicles that were on
4 the scene when you first arrived.

5 A. When I first got there, he was on the ground
6 right outside his vehicle on the driver's side.

7 Q. Okay. And that's a white Camaro, is that
8 correct?

9 A. Correct.

10 Q. And when you -- could you see that he was
11 resisting the officers who were trying to arrest him at
12 that point?

13 A. Yes.

14 Q. What kind of things was he doing to resist?

15 A. What I could see, he was on his hands and
16 wasn't giving them his hands underneath his body.

17 Q. So he was laying on top of his --

18 A. Correct.

19 Q. -- hands underneath his body after he was
20 laying on the ground, is that correct?

21 A. Correct.

22 Q. What's the next thing that you remember
23 doing after you approached the scene?

24 A. There was a gun on the ground close to
25 where -- kind of in between where he was laying and his

1 vehicle. I let the other officers -- the officers that
2 were trying to gain control of him know that there was
3 a gun on the ground, as if to say he could be -- have
4 another weapon on him. I was making them aware of
5 that.

6 **Q. And where were you -- were you standing with**
7 **the officers next to Mr. Koger or where were you?**

8 A. Yes, I was standing behind them.

9 **Q. How far away from Mr. Koger do you think you**
10 **were at that point?**

11 A. Very close, probably a foot.

12 **Q. Okay. What's the next thing that you**
13 **remember?**

14 A. Mr. Koger was -- in a matter of a minute or
15 less, he was placed into handcuffs and was placed on
16 his feet.

17 **Q. Where were you at when you saw him being**
18 **handcuffed?**

19 A. I was still close in proximity there.

20 **Q. So you may have moved a little bit, but**
21 **not --**

22 A. Not much.

23 **Q. -- any distance away?**

24 A. No.

25 **Q. Okay. What did you do next after you saw**

1 **him being handcuffed?**

2 A. He was -- what did I do?

3 **Q. Yes.**

4 A. Nothing. I didn't -- he was handcuffed, so
5 there was nothing for me to do.

6 **Q. Okay. Did you see him ever be moved from**
7 **the area right there next to his vehicle to some other**
8 **location?**

9 A. Yes.

10 **Q. Okay. Tell me about that.**

11 A. He was moved from where he was originally at
12 on the ground to the back of one of the patrol cars.

13 **Q. Do you know whose patrol car it was?**

14 A. I think it was Deputy Bennett's.

15 **Q. Do you know Deputy Bennett?**

16 A. Yes.

17 **Q. How long have you known him?**

18 A. As long as he was -- has been at the
19 sheriff's office, which, I'm guessing, is around eight
20 years maybe.

21 **Q. Okay. You mentioned earlier seeing a gun on**
22 **the ground near Mr. Koger when he was laying outside of**
23 **his vehicle. Did you see anyone do a pat-down of**
24 **Mr. Koger to check for weapons near his vehicle --**
25 **while he was near his vehicle?**

1 A. While he was where?

2 Q. While he was close to his vehicle laying on
3 the ground, did you see anyone do a pat-down, a check
4 for weapons after they put him in handcuffs?

5 A. While he was still on the ground, I didn't
6 notice anyone pat him down.

7 Q. Okay. Where were you on the scene when you
8 saw Mr. Koger at the back of the trunk of what you
9 believe was Deputy Bennett's patrol car?

10 A. I was standing back behind where they were
11 at.

12 Q. When you say "they," are you talking about
13 Mr. Koger and -- who else?

14 A. Deputy Bennett and the -- however many other
15 officers were there from other jurisdictions that I
16 don't know who they are.

17 Q. Okay. How far behind them do you think you
18 were?

19 A. Twenty feet maybe.

20 Q. Were you in the road, in the median?

21 A. I was in the road.

22 Q. How did you -- what made you walk to the
23 location where you went?

24 A. I just walked back there with them. No
25 particular reason.

1 Q. Well, I guess twenty feet away seems kind of
2 far to me, if you're standing with them. So did you
3 walk back -- was there a vehicle back where you were
4 standing or --

5 A. No. No, there wasn't.

6 Q. Okay. Do you recall anything in particular
7 that Mr. Koger was saying as he was being moved from
8 next to his vehicle to the back of the patrol car?

9 A. No.

10 Q. Do you recall anything that any officers
11 were saying to him at that point?

12 A. No.

13 Q. Tell me what you remember seeing at the back
14 of the patrol car once Mr. Koger got there.

15 A. Mr. Koger was back there behind the car with
16 Deputy Bennett and two to three other officers, but I
17 don't know who they are.

18 Q. Okay. Do you recall what the officers were
19 doing at the back of the trunk with Mr. Koger?

20 A. They were giving him strikes.

21 Q. Do you know why he was at the back of the
22 patrol car as opposed to being put inside the patrol
23 car?

24 A. No.

25 Q. Did you see who was giving him strikes?

1 A. I saw Deputy Bennett.

2 Q. What did you see Deputy Bennett do?

3 A. I'm sorry?

4 Q. What did you see Deputy Bennett do?

5 A. Strike him. I don't remember with what, but
6 I saw him strike him.

7 Q. Do you remember where the strikes landed on
8 Mr. Koger?

9 A. No, I can't remember where.

10 Q. Do you recall whether it was, like, the
11 bottom half, his legs, versus his upper body?

12 A. I believe upper body.

13 Q. Okay. I'm not trying to trick you, I just
14 want to get as specific as you remember. Okay?

15 A. (Moves head up and down.)

16 Q. Do you recall Sergeant Carson being at the
17 back of the patrol vehicle?

18 A. Yes.

19 Q. Do you know Sergeant Carson?

20 A. Yes.

21 Q. How long have you known him?

22 A. Ever since I've been with the sheriff's
23 office.

24 Q. Okay. So however long the two of you have
25 been there together, that's how long you've known him?

1 A. I don't remember if -- I can't remember
2 exactly when he started there, but -- I don't know if
3 he's -- I knew him once I was -- left Corrections and
4 went to Street Patrol.

5 Q. Okay. Do you know him outside of your
6 employment? Were you-all friends before you started
7 working at the sheriff's office?

8 A. I knew of Gregg. I don't know him outside
9 of work.

10 Q. You-all weren't hanging out on the weekends
11 or when you were off work if it wasn't a weekend?

12 A. No.

13 Q. Do you -- is Sergeant Carson considered your
14 superior at work?

15 A. He's a patrol sergeant.

16 Q. Okay. You're going to have to tell me
17 what -- I don't know what a patrol sergeant is. Beside
18 your job or above it in the hierarchy or totally left
19 field?

20 A. In what I do, I have a lieutenant and a
21 sergeant. They weren't on duty at the time.

22 Q. Okay.

23 A. So if I'm on duty, with the hours I work, I
24 would fall under the direction of a patrol sergeant --

25 Q. Okay.

1 A. -- or patrol corporal or patrol lieutenant.

2 Q. Okay. So on the scene with Mr. Koger on
3 March 8th, 2017, who -- did you have a superior on
4 scene?

5 A. Me in particular?

6 Q. Yes.

7 A. One of my supervisors?

8 Q. Well, was there anybody on scene in Hamilton
9 County that would have been superior to you?

10 A. Sergeant Carson and Corporal Baxter were on
11 scene.

12 Q. Do you recall when you noticed that Sergeant
13 Carson was on scene?

14 A. It was a few minutes after Koger had been
15 placed in the cuffs -- handcuffs in behind the car.

16 Q. Okay. So you got on scene before Sergeant
17 Carson arrived?

18 A. Yes.

19 Q. Do you recall seeing Sergeant Carson apply
20 any strikes to Mr. Koger?

21 A. Yes.

22 Q. Where did that occur on the scene? Was that
23 at -- by the Camaro or was that by the trunk?

24 A. Behind the car -- patrol car.

25 Q. Okay. Tell me what you saw Sergeant Carson

1 do.

2 A. Gave him some strikes.

3 Q. And when you say "him," that's Mr. Koger?

4 A. Yes.

5 Q. Do you remember if that was before or after
6 Deputy Bennett had given the strikes?

7 A. After, I believe.

8 Q. Okay. Do you remember seeing where those
9 strikes landed on Mr. Koger's person?

10 A. Upper body and I remember one lower body.

11 Q. Do you remember whether the -- are we
12 talking about open hand, closed hand?

13 A. I don't remember what part Sergeant Carson
14 was using.

15 Q. Do you recall what Mr. Koger was doing at
16 the time -- or could you see what Mr. Koger was doing
17 at the time the strikes were being applied?

18 A. I could see.

19 Q. Okay. What was he doing at that time?

20 A. He was just screaming.

21 Q. Was he resisting the officers that you know
22 of?

23 A. In my opinion, no.

24 Q. If Sergeant Carson or Deputy Bennett had
25 requested assistance from other officers, one, do you

1 think you would have been able to hear them if they had
2 asked for that?

3 A. If they asked for assistance?

4 Q. Yes.

5 A. I was close enough to have heard them. If
6 they asked for assistance, I could have heard it.

7 Q. Okay. Did they ever ask for assistance?

8 A. Not that I remember.

9 Q. Other than Sergeant Carson and Deputy
10 Bennett, was there any other officer that you could see
11 that had their hands on Phillip Koger?

12 A. If there were other officers, I would not
13 know who they were.

14 Q. Okay. Do you know a Deputy Smith?

15 A. Yes.

16 Q. Did you -- do you recall seeing him there
17 that night?

18 A. He was involved in the pursuit. Where he
19 was during this, I don't know. I don't -- I mean, he
20 was on scene. But exactly where, I'm not sure.

21 Q. Okay. Tell me about -- you said there were
22 upper body and then one lower body. The lower body
23 strike, do you recall -- tell me what you remember
24 about that.

25 A. I just remember one strike to Mr. Koger's

1 groin area.

2 Q. Do you recall how Mr. Koger reacted to that
3 strike? Do you remember what his reaction was?

4 A. Just screaming. I believe he was screaming.

5 Q. Have you ever had any training that would
6 have instructed you to use a strike to the groin area
7 on a suspect?

8 A. Personally, no.

9 Q. Have you ever used a method like that to
10 gain control over a suspect?

11 A. No.

12 Q. Maybe this is a differentiation you're not
13 making, but when I say "suspect," a suspect or someone
14 who's already in custody, would that change your
15 answer?

16 A. No.

17 Q. Okay. I'm going to show -- we're going to
18 show you some videos, and I want you to see if you can
19 recognize where you --

20 A. Okay.

21 Q. -- if you see yourself in any of these
22 videos.

23 Because there's audio on the video, if
24 you'll just raise your hand or make a motion, we'll
25 pause it and then we can talk about what we're seeing

1 on the screen. Is that fair?

2 A. Okay.

3 Q. The first video, I believe, is the dash cam
4 from your car. We have previously marked that as
5 Exhibit 1 to Sergeant Carson's deposition. And we are
6 going to begin this video at 23:12:30.

7 (Video being played and viewed.)

8 THE WITNESS: That is me there.

9 BY MS. PARKER:

10 Q. So we are at 23:13:07 on the video. And
11 that's you that just entered the screen on the
12 left-hand side of the screen, is that correct?

13 A. Yes.

14 (Video being played and viewed.)

15 BY MS. PARKER:

16 Q. Is this you here that was looking inside the
17 vehicle, or where are you?

18 A. No, ma'am, I'm right kind of -- my hands are
19 out like this.

20 Q. Okay.

21 A. You can kind of see my arms out.

22 Q. Are you kind of leaning over --

23 A. Yes, ma'am.

24 Q. -- to see what's going on?

25 A. Yes.

1 **Q. Okay. That's at 23:13:24.**

2 **(Video being played and viewed.)**

3 BY MS. PARKER:

4 **Q. Are you still right there in that mix with**
5 **everybody?**

6 A. Yes.

7 **Q. Okay.**

8 A. I believe that's me kind of in the center
9 standing up, not in the --

10 **Q. Right here?**

11 A. There, yes.

12 **Q. Okay. So sort of in the middle, looks like**
13 **there's three people we can see, and you would sort of**
14 **be the person in the middle, is that correct?**

15 A. Correct.

16 **Q. That's at 23:13:48.**

17 **(Video being played and viewed.)**

18 BY MS. PARKER:

19 **Q. Do you see yourself in this where we stopped**
20 **it here?**

21 A. In just a few more seconds, I walk back to
22 my car to turn the siren off.

23 **(Video being played and viewed.)**

24 THE WITNESS: That's me there, walking back
25 to my car.

1 BY MS. PARKER:

2 Q. At 23:14:08, we can see you walking towards
3 the camera, is that correct?

4 A. Correct.

5 (Video being played and viewed.)

6 BY MS. PARKER:

7 Q. And it looks like you have on long sleeves,
8 is that correct?

9 A. Uh-huh.

10 Q. Do you know whether the other Hamilton
11 County officers also would have been wearing that same
12 uniform?

13 A. I don't remember what they had on that
14 night.

15 Q. Okay. Were you going to say something?

16 A. No, ma'am.

17 Q. Okay.

18 (Video being played and viewed.)

19 THE WITNESS: That's me again, walking back
20 up.

21 BY MS. PARKER:

22 Q. For the record, that's 23:14:26.

23 (Video being played and viewed.)

24 BY MS. PARKER:

25 Q. From watching this video, can you tell who

1 any of the other officers are that you see in this
2 shot?

3 A. No, ma'am.

4 Q. Okay. But I believe that -- just from your
5 knowledge of the night, do you know what Hamilton
6 County officers would have been involved in that?

7 A. I know Deputy Bennett was there. Deputy
8 Smith, I'm not sure about.

9 Q. Okay.

10 (Video being played and viewed.)

11 BY MS. PARKER:

12 Q. The way that your dash cam works, the audio
13 that we hear, where is that coming from?

14 A. It's probably -- it's either -- there are
15 microphones -- I have a body mic on, and there are
16 microphones in my car, too.

17 Q. Okay.

18 A. So the radio traffic could be from the
19 inside of my car.

20 Q. Okay. Voices that appear to be from on
21 scene, though, would be picked up from your body mic,
22 is that correct?

23 A. Yes.

24 Q. So that would be near -- at least within the
25 vicinity that your body mic can pick up whatever those

1 **sounds are?**

2 A. Yes.

3 **Q. Okay.**

4 **(Video being played and viewed.)**

5 BY MS. PARKER:

6 **Q. At this point in the video, we're**
7 **at 23:15:14. Can you see from the video whether or not**
8 **Sergeant Carson has arrived on scene?**

9 A. No.

10 **Q. Where are you, you know, during this time?**

11 A. I'm -- the times I've watched this video
12 before, I believe this is where I lose myself as far as
13 in the mix with the other officers.

14 **Q. Do you think you're still in this big huddle**
15 **of --**

16 A. Yes. From what I remember, I'm still there
17 in that vicinity.

18 **Q. Okay.**

19 **(Video being played and viewed.)**

20 BY MS. PARKER:

21 **Q. So in the video, we're at 23:15:37. Can you**
22 **see that Mr. Koger was stood up and he started walking**
23 **to the back of the patrol car?**

24 A. Yes.

25 **Q. So you would be one of these officers who is**

1 **sort of following behind that we see?**

2 A. Yes.

3 **Q. But you don't know exactly which one of**
4 **those people you are?**

5 A. No.

6 **Q. Okay.**

7 **(Video being played and viewed.)**

8 BY MS. PARKER:

9 **Q. We're at 23:15:50. Do you know, from your**
10 **memory or on the video, where you would have been at**
11 **this time?**

12 A. From the video, not memory. I'm thinking
13 somewhere in -- either in the middle there or in the
14 back.

15 **Q. Okay.**

16 A. I'm thinking, at this point, I'm in the back
17 of the -- where the vehicle is at, the patrol car.

18 **Q. So behind the patrol vehicle?**

19 A. Yes.

20 **Q. So that would be kind of towards the**
21 **right-hand side of the vehicle?**

22 A. Yeah. Going from memory, because I lose
23 myself in the video.

24 **Q. Okay.**

25 **(Video being played and viewed.)**

1 BY MS. PARKER:

2 Q. Is this you walking back here? Can you
3 tell?

4 A. It's hard to tell, but no, I don't believe
5 so.

6 Q. Okay.

7 A. I can't say for sure from the video.

8 Q. All right.

9 (Video being played and viewed.)

10 BY MS. PARKER:

11 Q. You would agree, though, that it appears
12 that this person has their back to the camera?

13 A. Yes.

14 Q. Whether that's you or someone else?

15 A. Right.

16 Q. Okay.

17 (Video being played and viewed.)

18 BY MS. PARKER:

19 Q. Since the point when you said that you kind
20 of lose yourself in that shuffle there, have you
21 seen -- been able to see yourself anywhere else on the
22 video?

23 A. Not yet.

24 Q. Okay. We're at 23:16:50.

25 (Video being played and viewed.)

1 BY MS. PARKER:

2 Q. Do you know who either of these two officers
3 are that appear to be walking away from the crash -- or
4 the camera?

5 A. No, I have no idea.

6 Q. Based on what they're wearing, is that a
7 uniform that a Hamilton County officer would wear, that
8 brownish --

9 A. That's the only thing that really helps me
10 distinguish between ourselves. And when I say
11 "ourselves," in Hamilton County, we wear the blue.

12 A lot of agencies in Georgia wear the tan
13 pants and the lighter tan shirts. Georgia State Patrol
14 wears the blue pants with the lighter blue shirt.

15 And I think there was an agency down there,
16 possibly Fort Oglethorpe Police, that have on the same
17 type uniform as us, as far as the top and bottom blue.

18 Q. Okay -- making it very hard to distinguish
19 between you guys and the -- what we believe is Fort
20 Oglethorpe on the scene?

21 A. Yes.

22 Q. Okay.

23 (Video being played and viewed.)

24 BY MS. PARKER:

25 Q. Okay. So it looks like we've reviewed that

1 whole video.

2 You didn't ever see yourself come back on
3 the screen as far as what the video angle showed?

4 A. No. The times I've watched it before, I
5 lose myself in it.

6 Q. Okay. We're going to play another video.
7 This one, we believe, was from Officer Smith's dash
8 cam, which has been marked already as Exhibit 2 to
9 Sergeant Carson's deposition.

10 The same rules for this one, if you do ever
11 see yourself on this one, please let us know and we'll
12 stop it and mark the time.

13 (Video being played and viewed.)

14 THE WITNESS: That is me there, bending
15 over.

16 BY MS. PARKER:

17 Q. Okay. We're at 23:13:17 on the video. And
18 at the time stamp paused, we're kind of looking at your
19 back here, is that right?

20 A. Yes.

21 Q. Okay. It doesn't look like we can really
22 see any other officers there, but you're there, from
23 your memory, crouched down just out of view of the
24 camera?

25 A. Yes, ma'am.

1 (Video being played and viewed.)

2 BY MS. PARKER:

3 Q. Would that have been in that timeframe when
4 you saw the weapon and you were trying to instruct the
5 other officers that there was a weapon?

6 A. I think, looking at that, that's what I was
7 doing, I think, when I was kind of crouching, because
8 there were some sirens left on, it was loud, we was
9 yelling, Gun, Gun, and kind of motioning to the ground
10 where it was at.

11 Q. Okay. So you were crouching down so that
12 you could make sure they could hear -- the officers
13 could hear you?

14 A. Yes.

15 Q. Okay.

16 (Video being played and viewed.)

17 THE WITNESS: That's me there, kind of
18 before it went grainy. You can see me there to the
19 left of the screen.

20 BY MS. PARKER:

21 Q. Let's back it up a little bit. We're going
22 to back it up and replay it, just so we can try to
23 catch some of it.

24 We've backed it up to 23:13:56. Let's see
25 if we can restart it.

1 **(Video being played and viewed.)**

2 THE WITNESS: I still kind of lose myself
3 again.

4 BY MS. PARKER:

5 **Q. Okay.**

6 **(Video being played and viewed.)**

7 THE WITNESS: Right there, standing. I just
8 stood up.

9 BY MS. PARKER:

10 **Q. Okay. So we're at --**

11 A. My left shoulder is kind of facing this way.

12 **Q. Okay. We're at 23:14:01, and you're saying**
13 **your left shoulder is facing the camera?**

14 A. Yes, ma'am, I think.

15 **Q. Of the two officers there, you would be the**
16 **one on the right that we can see clearly, is that**
17 **correct?**

18 A. Correct.

19 **Q. Okay.**

20 **(Video being played and viewed.)**

21 BY MS. PARKER:

22 **Q. At any point in here, have you been able to**
23 **see yourself back in the camera?**

24 A. No.

25 **Q. Okay. That's at 23:14:51.**

1 **(Video being played and viewed.)**

2 BY MS. PARKER:

3 **Q. Do you recognize any of the other officers**
4 **in this shot?**

5 A. No.

6 **Q. Okay. That's at 23:15:26.**

7 **(Video being played and viewed.)**

8 BY MS. PARKER:

9 **Q. In this shot, we're at 23:16:19. The person**
10 **to the left, is that a trooper?**

11 A. I'm guessing by the hat, yes.

12 **Q. Okay.**

13 A. I'm not sure.

14 **Q. The hat is the only thing that really gives**
15 **you a clue, is that true?**

16 A. Yes.

17 **Q. Do you recall there being a trooper on**
18 **scene?**

19 A. I know there was at least one Georgia state
20 Trooper there.

21 **Q. But you weren't familiar with who that**
22 **trooper was?**

23 A. No.

24 **Q. Okay.**

25 **(Video being played and viewed.)**

1 BY MS. PARKER:

2 Q. This next video we've marked as Exhibit 3 to
3 Sergeant Carson's deposition.

4 The same rules for this, if you see yourself
5 or if you see anyone else that you recognize, let us
6 know and we'll pause it.

7 A. Okay.

8 (Video being played and viewed.)

9 BY MS. PARKER:

10 Q. When you were in the pursuit, I think we saw
11 from the other video that you were actually ahead of
12 where the accident occurred -- the cars collided and
13 Mr. Koger's car stopped, is that correct?

14 A. Yes.

15 Q. And you kind of turned your vehicle around
16 to come back to it, is that right?

17 A. Yes.

18 Q. Okay.

19 (Video being played and viewed.)

20 BY MS. PARKER:

21 Q. Do you recognize this person that's coming
22 into frame here?

23 A. No.

24 Q. Okay. That's at 23:12:00.

25 (Video being played and viewed.)

1 BY MS. PARKER:

2 Q. Can you recognize that voice?

3 A. No.

4 Q. Can you hear from the video what was said?

5 A. Sounded like, Piece of shit.

6 Q. When you were -- sorry, let's mark that.

7 This is at 12: -- I'm sorry, 23:12:56 is where we've
8 stopped the video.

9 Do you recall hearing someone say that when
10 you were on scene?

11 A. No.

12 Q. Okay.

13 (Video being played and viewed.)

14 BY MS. PARKER:

15 Q. We're at 23:13:20. Could you hear someone
16 asking someone else, Are you okay, Do you need a medic?

17 A. Uh-huh.

18 Q. Did you recognize that voice?

19 A. No.

20 (Video being played and viewed.)

21 BY MS. PARKER:

22 Q. We're at 23:13:48. Can you tell me -- were
23 you able to see -- is this where they kind of are
24 bringing Mr. Koger around to the back of the vehicle?

25 A. Yeah, that's what it looks like to me.

1 Q. Okay. Do you recall that Mr. Koger was kind
2 of wearing a lighter-colored shirt?

3 A. I just -- I didn't know it until I saw it on
4 the video.

5 Q. Okay.

6 A. I don't remember what he had on that day.

7 Q. Is that how you were able to distinguish him
8 from an officer on the video?

9 A. Yes.

10 Q. Okay. But that night, you don't remember --
11 have an independent memory of that?

12 A. Of what he had on? No.

13 Q. Okay.

14 (Video being played and viewed.)

15 BY MS. PARKER:

16 Q. Can you tell who anyone is in this shot from
17 the video?

18 A. Not from the video.

19 Q. Okay. That's 23:13:52.

20 (Video being played and viewed.)

21 BY MS. PARKER:

22 Q. Can you recall, just from your independent
23 memory, who -- I think you've already testified you
24 remember Deputy Bennett and Sergeant Carson being at
25 the back of the trunk.

1 A. Yes.

2 Q. But on this video, you can't distinguish
3 which one of them might be who?

4 A. No.

5 Q. Okay.

6 (Video being played and viewed.)

7 BY MS. PARKER:

8 Q. Did you see those strikes on the video?

9 A. (Moves head up and down.)

10 Q. We're at 23:14:03. From your memory, you
11 testified that you saw both Bennett and Carson give
12 strikes. Do you know who that would have been at that
13 time?

14 A. If I -- it would be a guess. I would say
15 Bennett at that time.

16 Q. But you can't tell from the video who's
17 doing it?

18 A. No.

19 Q. Okay.

20 (Video being played and viewed.)

21 BY MS. PARKER:

22 Q. That is 23:14:20. And you haven't seen
23 yourself yet on the video that we can distinguish?

24 A. No.

25 Q. Based on your memory and from what you are

1 **seeing on the video, this is the point in time where**
2 **you say you thought you would have been behind them**
3 **somewhere?**

4 A. Correct.

5 Q. Okay.

6 **(Video being played and viewed.)**

7 BY MS. PARKER:

8 Q. **This is at 23:15:43. Did you recognize any**
9 **of those voices recent in time to when we stopped this**
10 **video that you could hear on the video?**

11 A. No.

12 **(Video being played and viewed.)**

13 BY MS. PARKER:

14 Q. **Based on your memory, do you recall where**
15 **Mr. Koger was taken after the incident at the trunk**
16 **ended?**

17 A. No.

18 Q. **Okay. From this video, are you able to tell**
19 **that he's no longer at the trunk of the car?**

20 A. I don't see him on the video.

21 Q. **Okay. After the incident at the trunk**
22 **ended, do you know what you did next?**

23 A. Because of what I do, being a traffic
24 investigator, I knew that we had two wrecked cars and
25 Mr. Koger's car.

1 Part of my job is to do what we call an
2 inhouse report. It's an internal document that I have
3 to fill out and photograph what -- the damage to the
4 vehicles, where they are at rest.

5 At some point, I switched into that mode
6 because I knew that I was on the traffic unit on duty
7 that night. I knew that responsibility was going to
8 lie with me.

9 As far as photographing the damage to the
10 vehicles, all three vehicles, and gathering information
11 for our inhouse document, at some point, I started
12 talking to the Georgia State Patrol that was there to
13 start asking him if he was going to work the wreck,
14 because part of the documentation is who works the
15 wreck, what agency, their case number. That all goes
16 on our internal report.

17 **Q. Okay. So at some point, you kind of -- you**
18 **stopped being a part of the scene and started**
19 **documenting the scene? Would that be correct?**

20 **A. Correct.**

21 **Q. Okay. Before I do that, do you recall**
22 **seeing Mr. Koger receiving any medical treatment?**

23 **A. At some point while I was gathering**
24 **information for -- when I was doing what I was doing,**
25 **as far as photographing, gathering information for the**

1 internal document, I do recall an ambulance showing up
2 and I do recall seeing Mr. Koger being placed in the
3 back of the ambulance, just kind of looking over my
4 shoulder and seeing it while I was focused on what I
5 was doing.

6 Q. Okay. So you weren't paying much attention
7 to it because you were doing something else?

8 A. No.

9 Q. Okay. At this point, we're at 23:15:55.
10 Just based on the quality of the video, you haven't
11 been able to see yourself?

12 A. I haven't seen myself yet, no.

13 Q. Okay. That doesn't mean you weren't there,
14 it's just the quality of the video is pretty bad?
15 Would that be true?

16 A. It's not the best.

17 Q. Okay. I think we can go ahead and stop this
18 one here. I don't know if there's any other action in
19 this video. It's quite long.

20 MS. VARNELL: Since I wasn't here yesterday,
21 can you tell me whose video that was?

22 MR. STONE: I think it's Cannon's.

23 MS. PARKER: Yeah, we think it's Cannon's,
24 Sergeant Cannon's. It's what was marked as Exhibit 3
25 to Sergeant Carson's deposition. It was already made

1 an exhibit to Sergeant Carson's deposition.

2 MS. VARNELL: Okay.

3 MR. CARSON: Is that the one looking at the
4 Georgia car in the back right corner?

5 MS. PARKER: Right.

6 MR. CARSON: Yeah.

7 MS. PARKER: That's Cannon's.

8 BY MS. PARKER:

9 Q. There's one more. This is Exhibit 4 to
10 Sergeant Carson's deposition. This is Officer Davis'
11 car, we believe. We'll start this one at -- 23:11:23
12 is where this video is going to begin.

13 (Video being played and viewed.)

14 BY MS. PARKER:

15 Q. We're at 23:14:28 on this video. Officer
16 Cook, I know this video is maybe the worst one of all
17 of them that we've watched, but can you see anything
18 that's going on in this video, whether or not you can
19 discern who's who?

20 A. No.

21 Q. Can you tell that this is the back of the
22 patrol car where we've been talking about this incident
23 at the trunk?

24 A. Yes.

25 Q. Okay. Does it appear that this is the point

1 in time where the officers have moved Mr. Koger to the
2 back of the trunk?

3 A. Yes.

4 Q. Okay. Other than that, are you able to tell
5 me anything specific about the incident from this
6 video?

7 A. No.

8 Q. Okay.

9 (Video being played and viewed.)

10 BY MS. PARKER:

11 Q. This is at 23:14:39. I think you had
12 mentioned walking to the back of the car with them and
13 maybe being twenty feet away. From this video shot,
14 can you show me where -- the general area where you
15 think you would have been, or do you think it would
16 have been outside of the view of this camera?

17 A. From memory, I'm guessing I'm one of those
18 officers.

19 Q. Sort of that huddle of --

20 A. Yes. I haven't picked myself up on this
21 video yet.

22 Q. Okay.

23 (Video being played and viewed.)

24 BY MS. PARKER:

25 Q. This is at 23:15:00. Do you recognize any

1 of the voices that you've heard on the video so far?

2 A. No.

3 Q. Okay.

4 (Video being played and viewed.)

5 BY MS. PARKER:

6 Q. This is at 23:17:45. You haven't been able
7 to see yourself on this video?

8 A. No.

9 Q. Or recognize yourself, I guess, on the
10 video?

11 A. No.

12 Q. Any of the voices that you've heard on this
13 video, you haven't been able to recognize those voices?

14 A. No.

15 Q. Okay. We'll go ahead and end that one
16 there.

17 Officer Cook, I have some screenshots that
18 we've taken from these videos. I want to see if you
19 recognize any of the people, including yourself, in any
20 of these screenshots. But I'll tell you, the quality
21 is not much better than the videos that we've watched.

22 This screenshot shows a time on it
23 of 23:14:15. Can you -- first, let me -- can you
24 orient me to what I'm looking at there, if you can tell
25 from that, based on what you remember from that night?

1 A. This looks like Deputy Smith's patrol
2 vehicle and the Camaro that Koger was driving.

3 Q. Okay. Let me just -- for the record, you're
4 pointing at the right-hand side of the picture --

5 A. Right.

6 Q. -- that white patrol car there. That's
7 Deputy Smith's vehicle? Is that what you said?

8 A. Correct.

9 Q. Okay.

10 A. That's obviously a patrol vehicle. From
11 where, I don't know.

12 Q. Okay. And that would be the black or
13 dark-colored car?

14 A. You can see a couple of officers by Koger's
15 vehicle and a larger group of officers to the left of
16 the patrol vehicle you see here.

17 Q. Okay. Can you recognize any faces on that
18 vehicle?

19 A. Recognize any faces on?

20 Q. I mean, I'm sorry, in the photograph. Do
21 you recognize who any of the people standing around
22 are?

23 A. No.

24 Q. Okay. Let's mark that one as an exhibit.

25 (Off-the-record discussion.)

(The photograph was marked
Exhibit No. 1.)

BY MS. PARKER:

Q. This one is marked 23:14:20. Can you -- do you recognize any people in that photograph? Can you tell who anyone is?

A. As far as people, no.

Q. Okay. Does that appear to be the period in time where the officers have walked to the back of the patrol vehicle where Mr. Koger -- where they took Mr. Koger to the back of the patrol vehicle?

A. I'm guessing yes. I don't -- in this photo, I do not see Koger.

Q. Okay. This one is marked as 23:14:21. Do you see Mr. Koger in that photograph?

A. I see a leg here and what appears to be a white tennis shoe. I'm going to guess that's Koger. I don't remember anyone else having on white tennis shoes.

Q. Okay. The leg there, does it appear, to you, to be off the ground?

A. The foot does.

Q. Okay.

A. Slightly, maybe. It's hard to tell from this photo.

1 Q. Okay. There appears to be some other
2 officers kind of standing behind that.

3 A. Correct.

4 Q. Is that what you see in that photograph, as
5 well?

6 A. Yes.

7 Q. But from this, you just can't discern who
8 those might be?

9 A. Correct.

10 Q. It could be you, even, we just can't tell
11 from this photograph, is that true?

12 A. Correct.

13 Q. Okay. Let's just mark both of these
14 together as Collective Exhibit No. 2.

15 (The photographs were marked
16 Collective Exhibit No. 2.)

17 BY MS. PARKER:

18 Q. This next set -- I think we've determined
19 that this is from Officer Smith's vehicle -- maybe.
20 It's a Hamilton County officer's vehicle.

21 MR. EXUM: Bennett's vehicle.

22 MS. PARKER: Bennett's vehicle? Okay.

23 BY MS. PARKER:

24 Q. This one has 23:15:59. Do you recognize
25 either of the officers in that photograph?

1 A. No.

2 Q. Okay. This one is 23:16:00. Do you
3 recognize anyone in that photograph?

4 A. No.

5 Q. Okay. The two officers in the middle of
6 this photograph appear to have on a dark-colored
7 uniform. Can you tell whether or not that would be
8 Fort Oglethorpe or Hamilton County from this
9 photograph?

10 A. It's hard to tell the uniform and the patch.
11 I can't -- what agency they're with. I'm just going by
12 what their faces look like.

13 Q. Okay. So this doesn't look like Sergeant
14 Carson or Officer Smith or Officer Bennett to you?

15 A. No.

16 Q. Okay -- and I think there was one other
17 person that you mentioned that came on the scene,
18 Baxter?

19 A. Corporal Baxter.

20 Q. Okay. It doesn't look like Corporal Baxter
21 to you, either?

22 A. It does not.

23 Q. Okay. This one is 23:16:04. Same question
24 on that one, do you recognize either of those people in
25 that photograph?

1 A. I do not.

2 Q. This one is 23:16:55. Do you recognize
3 anyone in that photograph?

4 A. No.

5 Q. This one is 23:16:57. Do you recognize
6 anyone in that photograph?

7 A. No.

8 Q. Okay. These officers have on the
9 light-colored tops, is that correct?

10 A. Yes.

11 Q. And so that -- they would not be from
12 Fort -- I mean, from Hamilton County, is that correct?

13 A. No.

14 Q. Okay. This one is 23:17:25. Do you
15 recognize that person?

16 A. No.

17 Q. This one is 23:17:49. Do you recognize
18 anybody in there -- in that photograph?

19 A. No.

20 Q. This is 23:18:12. Do you recognize anybody
21 in that photograph?

22 A. No.

23 Q. This is 23:18:33. Do you recognize anyone
24 in that photograph?

25 A. No.

1 Q. Okay. This person here with the hat, do you
2 think that may be the trooper, just because he has on a
3 hat?

4 A. It looks like the uniform that the Georgia
5 State Patrol wears.

6 Q. Okay. This is 23:19:00. Do you recognize
7 anybody in that photograph?

8 A. No.

9 Q. This is 23:19:19. Do you recognize anybody
10 in that photograph?

11 A. No.

12 Q. This one is 23:19:40. Do you recognize
13 anyone in that photograph?

14 A. No.

15 Q. This one is 23:19:43. Do you recognize
16 anyone in that photograph?

17 A. No.

18 Q. This one is 23:20:15. Do you recognize
19 anyone in that photograph?

20 A. No.

21 Q. Okay. Let me ask you a question about this
22 one. The two officers here on your -- to your right
23 side in this photograph both appear to have on the
24 darker-colored uniform, is that true?

25 A. Yes.

1 Q. Okay. This car that -- this patrol car that
2 we see here, do you know whose car that was?

3 A. I believe that's Deputy Smith's.

4 Q. That would be whoever's car made contact
5 with the passenger's side of Mr. Koger's car, is that
6 correct?

7 A. Yes.

8 Q. Does this appear to be Deputy Smith or can
9 you tell?

10 A. It looks like him, but I can't say it's him
11 for sure.

12 Q. Can't say for sure? Okay. But from your
13 view of these officers, this would have to either be a
14 Fort Oglethorpe or a Hamilton County officer, based on
15 the dark color of the uniforms, is that true?

16 A. Based off that, yes.

17 Q. Okay. This one is 23:20:20. Do you
18 recognize any of those people?

19 A. This person to the left -- I'm sorry, to the
20 right looks like -- that looks more like Deputy Smith
21 to me.

22 Q. Okay.

23 A. I don't know that it is. I'm guessing by
24 the uniform that's Georgia State Patrol, but I don't
25 know if it is.

1 **Q. Okay. Can you put a circle around who you**
2 **think -- the one person that you could identify in that**
3 **picture?**

4 A. (Complies.)

5 **Q. Hopefully we can get that to show up on a**
6 **copy.**

7 MS. PARKER: He just circled the person on
8 the right side of this photograph.

9 Let's go ahead and mark this one.

10 (The photograph was marked
 Exhibit No. 3.)

11

12 BY MS. PARKER:

13 **Q. This one is 23:22:13. Do you recognize any**
14 **of the people in that photograph?**

15 A. The person to the left looks like Deputy
16 Bennett to me, and the person in front of him looks
17 like me, but it's hard to tell.

18 **Q. Okay. Would you just circle Deputy Bennett,**
19 **you said, and -- circle him first.**

20 A. (Complies.)

21 **Q. And see if you could put a mark or a B or**
22 **something above his head. That way, we'll know --**

23 A. (Complies.)

24 **Q. Okay. And then the other person who you**
25 **think might be you -- and the record is going to**

1 reflect, obviously, your testimony that you're not
2 exactly sure -- would you circle that person?

3 A. (Complies.)

4 Q. And then, I guess -- I was going to say put
5 a C, but there's several people with a C name, so maybe
6 could you just write your name above that person?

7 A. First name?

8 Q. Just your last name is fine.

9 A. (Complies.)

10 MS. PARKER: Okay. If we could mark that
11 one as the next exhibit, that will be Exhibit 4.

12 (The photograph was marked
Exhibit No. 4.)

13
14 BY MS. PARKER:

15 Q. This one is 23:23:24. Do you recognize
16 anyone in that photograph?

17 A. The person to the left looks like Corporal
18 Baxter. I'm judging that, not so much that I can see
19 his face, but if I -- at one point, Corporal Baxter was
20 in K9 for us. I can see the corporal stripes, it's
21 hard to make out the patch. I cannot -- I do not
22 remember if he was still in K9 at this point.

23 Q. Okay.

24 A. And the person to the right is -- looks to
25 me to be a Georgia State Patrol.

1 Q. Okay. If you would, if you could just write
2 Baxter above that person?

3 A. (Complies.)

4 Q. And that's to the right of the photograph,
5 is that correct -- or I guess that would be your -- the
6 left of the photograph. I'm sorry. I'm backwards the
7 way you've marked that.

8 MS. PARKER: Can we make that Exhibit No. 5?

9 (The photograph was marked
10 Exhibit No. 5.)

11 BY MS. PARKER:

12 Q. This is 23:23:57. Do you recognize anyone
13 in that photograph?

14 A. No.

15 Q. And this is 23:24:04. Do you recognize
16 anyone in that photograph?

17 A. No.

18 Q. And this is 23:24:02. Do you recognize
19 anyone in that photograph?

20 A. No.

21 MS. PARKER: If we could just mark all these
22 other photographs where he didn't recognize anyone, as
23 Collective Exhibit 6?

24 (The photographs were marked
25 Collective Exhibit No. 6.)

1 MS. PARKER: This next set looks like it's
2 from Officer Cook's dash cam. This should be the last
3 set.

4 BY MS. PARKER:

5 Q. This one is marked as 23:13:06. Do you
6 recognize that as being the view that was from your
7 vehicle that night?

8 A. Yes.

9 Q. Okay. From that photograph, can you
10 recognize who any of the officers are?

11 A. The officer in the background by the white
12 Camaro, no.

13 Q. Okay.

14 A. The officer to the left, the one in the
15 foreground, looks like me.

16 Q. Okay. So that would be on the far left
17 side, I suppose, of the photograph?

18 A. Yes.

19 Q. Would you just write your name above that
20 person?

21 A. (Complies.)

22 MS. PARKER: If we could mark that as the
23 next exhibit?

24 (The photograph was marked
Exhibit No. 7.)
25

1 BY MS. PARKER:

2 Q. This is 23:13:17. Can you recognize who any
3 of the officers are in that photograph?

4 A. No.

5 Q. This is 23:13:47. Do you recognize any of
6 the officers in that photograph?

7 A. No.

8 Q. This is 23:13:48. Do you recognize any of
9 the officers in that photograph?

10 A. No.

11 Q. Okay. Would it be true that you would think
12 you're one of those officers over there, but you just
13 can't discern which one you are? I don't want to put
14 words in your mouth, if you don't know if you're over
15 there.

16 A. Possibly.

17 Q. Okay. This one is 23:13:49. Do you
18 recognize anyone in that photograph?

19 A. No.

20 Q. This is 23:13:51. Can you make out anybody
21 in that photograph?

22 A. No.

23 Q. This is 23:14:08. Can you make out anybody
24 in that photograph?

25 A. Background, no. Foreground, yes. The

1 person walking towards the camera view, head turned to
2 the left, looks like me.

3 **Q. Okay. If you could maybe circle that and**
4 **write your name above it?**

5 A. (Complies.)

6 **Q. Okay.**

7 MS. PARKER: If we can make that one the
8 next exhibit?

9 (The photograph was marked
Exhibit No. 8.)

10
11 BY MS. PARKER:

12 **Q. This is 23:14:12. Can you make out anybody**
13 **in that photograph?**

14 A. Background, no. Foreground, the person on
15 the left walking towards the camera view looks like me.

16 **Q. Okay. If you could circle that one and**
17 **write your name above that person?**

18 A. (Complies.)

19 (The photograph was marked
Exhibit No. 9.)

20
21 BY MS. PARKER:

22 **Q. Would that have been the point in time where**
23 **you were walking back toward your car, I think you said**
24 **to turn the siren off?**

25 A. Yes.

1 Q. This one is 23:14:19. Can you make out
2 anybody in that photograph?

3 A. No.

4 Q. Okay. The next one is 23:14:35. Can you
5 make out anybody in that photograph?

6 A. No.

7 Q. Okay. This next one is 23:15:27. Can you
8 make out anybody in that photograph?

9 A. No.

10 Q. In this picture, it appears that most of the
11 officers are still over there by Mr. Koger's car, is
12 that correct?

13 A. Yes.

14 Q. That would have been kind of the huddle
15 where everyone was when Mr. Koger was on the ground
16 outside the vehicle, is that correct?

17 A. Yes.

18 Q. Okay. The next one is 23:15:31. Can you
19 make out anybody in that photograph?

20 A. No.

21 Q. The next one is 23:15:34. Can you make out
22 anyone in that photograph?

23 A. No.

24 Q. Okay. Based on what you remember from the
25 incident and looking at this picture, it appears the

1 officers have moved Mr. Koger off the ground. And this
2 may be the period of time when they're walking him back
3 to the back of the trunk.

4 A. Yes.

5 Q. Okay. And so from your memory during that
6 period of time, you would have been in that same sort
7 of huddle of officers there that appear in the middle
8 of this photograph, is that correct?

9 A. From my memory, yes.

10 Q. Okay. The next one is 23:15:35. Do you
11 recognize anyone in that photograph?

12 A. No.

13 Q. The next one is 23:15:36. Do you recognize
14 anyone in that photograph?

15 A. No.

16 Q. Okay. If we look here on -- toward the
17 right side of the photograph, that person there appears
18 to have on a lighter-colored shirt, is that correct?

19 A. It looks like a white shirt, yes.

20 Q. Okay. Would that, based on your memory, be
21 Mr. Koger?

22 A. After what I -- after seeing the video and
23 refreshing my memory about what he had on, I do not
24 remember, but it possibly is Koger.

25 Q. Okay. So if that's -- you know, you would

1 still be in that group of officers there in that
2 photograph if they're walking him to the back of the
3 trunk in this picture?

4 A. From memory, yes.

5 Q. Okay. This is 23:15:37. Can you make out
6 anyone in that photograph?

7 A. I'm going to guess -- to the right of the
8 photo, because of the white shirt, I'm going to guess
9 that's Koger.

10 Q. Okay. At that point in time, based on your
11 memory, do you know where you would have been on this
12 photo?

13 A. No.

14 Q. Okay. The next one is 23:15:38. Can you
15 make out anyone on that photo?

16 A. No.

17 Q. The next one is 23:15:39. Can you make out
18 anyone in that photo?

19 A. No.

20 Q. The next one is 23:15:40. Can you make out
21 anyone on that photograph?

22 A. No.

23 Q. The next one is 23:15:41. Can you make out
24 anyone in that photograph?

25 A. No.

1 **Q. The next one is 23:15:43. Do you recognize**
2 **anyone in that photograph?**

3 **A. No.**

4 **Q. The next one is 23:15:44. Do you recognize**
5 **anyone in that photograph?**

6 **A. No.**

7 **Q. 23:15:45, do you recognize anyone in that**
8 **photograph?**

9 **A. No.**

10 **Q. 23:15:47?**

11 **A. No.**

12 **Q. 23:15:49?**

13 **A. No.**

14 **MS. PARKER: We'll mark the rest of these as**
15 **Collective Exhibit 10.**

16 (The photographs were marked
17 Collective Exhibit No. 10.)

18 **BY MS. PARKER:**

19 **Q. Just a few more questions, Officer Cook.**
20 **Did any of the other Hamilton County law**
21 **enforcement that were on the scene that night talk to**
22 **you about this incident in the days or weeks after it**
23 **happened?**

24 **A. There was attempts made to talk.**

25 **Q. Okay. And who -- which of the officers**

1 would that have been?

2 A. Detective Bennett and Sergeant Carson.

3 Q. When was it that you remember Deputy Bennett
4 trying to talk to you about it?

5 A. Time-wise, I don't know how much time had
6 gone by.

7 Q. Was it -- do you think it was the same year?

8 A. Yes.

9 Q. Do you recall what -- how many times did he
10 try to talk to you about it?

11 A. Deputy Bennett once.

12 Q. Okay. Tell me how that conversation went.

13 A. It was at our East Sector in the back
14 parking lot. He made mention about it, not anything in
15 particular or anyone in particular about it, and I just
16 mentioned that I didn't think it was appropriate for us
17 to talk about it.

18 Q. And what about Sergeant Carson? How many
19 times did he try to talk to you about it?

20 A. Three times that I remember.

21 Q. Do you recall when any of those happened?

22 A. No.

23 Q. Do you think it was within, you know, a few
24 months or a year of when the incident itself happened?

25 A. Possibly within the year.

1 Q. Okay. Do you recall whether they happened
2 close together or were they separated by time, the
3 three different incidents?

4 A. Seemed to be separated by time.

5 Q. Okay. What do you recall about your
6 conversations with Sergeant Carson regarding this?

7 A. Same thing, I just -- he wanted to just talk
8 to me about it. There again, I didn't think it was
9 appropriate for us to talk about it, so I didn't engage
10 in much conversation about it at all.

11 Q. Do you recall if any of the conversations
12 with Sergeant Carson were after this lawsuit had been
13 filed?

14 A. No.

15 Q. You don't remember or they weren't?

16 A. I don't remember if they were.

17 Q. Okay. Do you remember if he ever mentioned
18 having read your report or statement to the GBI?

19 A. Yes.

20 Q. Sergeant Carson mentioned that to you?

21 A. Yes.

22 Q. I'm not asking about your attorney, but
23 other than your attorney, have you spoken to anyone
24 else in Hamilton County law enforcement about this
25 incident?

1 A. I've mentioned a few things about it to a
2 couple of different people, but not in any detail.

3 Q. If you had intervened in Sergeant Carson --
4 in his use of force that night, would you have been
5 subject to discipline within the department?

6 A. No.

7 Q. Okay. What about with Officer Bennett?
8 Would you have been subject to discipline if you had
9 intervened when he was striking Mr. Koger?

10 A. No.

11 MS. PARKER: Okay. That's all I have.

12 MS. HAVLIK: I don't have anything.

13 MR. STONE: I don't have anything.

14 MS. VARNELL: I do.

15 CROSS EXAMINATION

16 BY MS. VARNELL:

17 Q. Officer Cook, when Sergeant Carson discussed
18 this case with you, did he ever show you a video?

19 A. Yes.

20 Q. Do you remember which video he showed you?

21 A. I don't remember which one it was.

22 Q. And it was a video you had not seen
23 previously?

24 A. That I recall. At the time he showed it to
25 me, I don't remember seeing it before.

1 Q. I know you testified you didn't engage in
2 much conversation with him, but when he showed you that
3 video, did you have any -- did you make any comments to
4 him?

5 A. I don't remember making any comments.

6 Q. Did you tell him that that was a different
7 angle that you had seen before of the encounter with
8 Mr. Koger?

9 A. I don't remember what I said to him about
10 it.

11 Q. You don't remember anything you said?

12 A. No.

13 Q. Okay. When you gave your statement to the
14 GBI, they didn't -- the GBI agent did not show you any
15 videos, is that right?

16 A. I don't remember -- he showed me -- if I
17 remember, he showed me one video, I believe.

18 Q. One? And we've seen four today. You did
19 not see those four when you were interviewed by the
20 GBI, is that right?

21 A. If I saw them when I was interviewed by the
22 GBI, I don't remember it.

23 Q. When you -- do you remember drafting
24 interrogatory responses as a part of this case?

25 A. Yes.

1 MS. VARNELL: I have copies that are ready.
2 I guess we can --

3 MS. PARKER: I've got a copy here. Do you
4 want to use mine?

5 MS. VARNELL: Of his interrogatories?

6 MS. PARKER: Uh-huh.

7 MS. VARNELL: Okay.

8 BY MS. VARNELL:

9 Q. Do you remember filling these out -- I can
10 probably ask a better question than that.

11 If you'll go -- turn to the back, about
12 three pages from the back, is that your signature on
13 the page that says Verification? It doesn't have a
14 page number on it.

15 A. Yes.

16 Q. Is that your signature?

17 A. Yes.

18 Q. A notarized signature?

19 A. Yes.

20 Q. So did you prepare these documents with your
21 attorney?

22 A. I'm sorry?

23 Q. Did you prepare these documents with your
24 attorney?

25 A. From what I remember, yes, it was with my

1 attorney.

2 Q. Will you turn to page 9?

3 A. (Complies.)

4 Q. Are you there with me?

5 A. Yes.

6 Q. On page 9, you've got Interrogatory No. 6.

7 And then it's got, in bold, your response to that. Do
8 you see that?

9 A. Yes.

10 Q. That's a narrative of yours that, at the end
11 of the document, has been notarized, is that correct?

12 A. Yes.

13 Q. And that is your statement of what occurred
14 on March 8 of 2017, is that right?

15 A. Yes.

16 Q. If you'll turn to page 10?

17 A. (Complies.)

18 Q. Do you see the second full paragraph from
19 the end of that response that begins, "After the
20 deputies put Mr. Koger in handcuffs"?

21 A. Yes.

22 Q. Will you read that for me?

23 A. "After the deputies put Mr. Koger in
24 handcuffs, they took him to the back of a patrol
25 vehicle. Mr. Koger continued to resist and officers

1 present on scene began to hit him and strike him. As
2 soon as Sergeant Carson came on the scene, I was
3 finished with my duties related to the pursuit and, as
4 a traffic investigator, I began working to assess the
5 damage to the vehicles and assisting the other law
6 enforcement agencies in assessing -- in assessment of
7 damage to other vehicles. I had no further interaction
8 with Mr. Koger and I left the scene shortly after."

9 **Q. So at least in your interrogatory responses,**
10 **you state that Mr. Koger was resisting when he was at**
11 **the back of the patrol car?**

12 A. Yes.

13 **Q. And that's when the officers that you**
14 **observed striking him, when he was resisting?**

15 A. Yes.

16 **Q. And that's your testimony?**

17 A. I observed him offering a little resistance.

18 **Q. And you said in your interrogatories that he**
19 **continued to resist, is that right?**

20 A. Yes.

21 **Q. Okay. You were about twenty feet away from**
22 **the back of the patrol car, is that correct?**

23 A. A guess.

24 **Q. A guess?**

25 A. (Moves head up and down.)

1 Q. You would agree with me that when
2 determining whether somebody is resisting, the officer
3 that actually had hands-on is probably a better judge
4 of resistance? Would you agree with me on that?

5 A. Yes.

6 Q. Okay -- because that officer, of course, is
7 closer than you to the suspect, right?

8 A. Yes.

9 Q. That officer had physical hands on the
10 suspect, is that right?

11 A. Yes.

12 Q. And you, Officer Cook, your training on --
13 of course, you're not an expert on use of force, right?

14 A. No.

15 MS. VARNELL: All right. I think that's all
16 I have.

17 MS. PARKER: I have just one follow-up
18 question.

19 REDIRECT EXAMINATION

20 BY MS. PARKER:

21 Q. Officer Cook, when you met with the GBI and
22 they asked you questions, was that pretty close in time
23 to when the incident had occurred?

24 A. It seemed like it was. It seemed like not
25 much time had gone by before I met with the GBI agent.

1 **Q. Would you agree with me that the statement**
2 **that you gave closest in time to the incident would**
3 **probably be the most accurate, as far as what you**
4 **remembered from your own memory?**

5 MR. EXUM: Object to the form.

6 THE WITNESS: I don't know that it would be
7 considered the most accurate. But as it, in time, was
8 closer to the incident, I probably had a better
9 recollection of what happened because of the amount of
10 time that had gone by. Not as much time had gone by --

11 BY MS. PARKER:

12 **Q. Okay. So -- go ahead.**

13 A. -- in previous discussions about this.

14 **Q. Okay. So it would be the best recollection**
15 **that you would have of the incident itself?**

16 MR. EXUM: Same objection.

17 THE WITNESS: I don't know if I would
18 describe it as best. It would probably be, there
19 again, based off my memory because of not much time
20 going by. It would be a recollection of what happened.

21 BY MS. PARKER:

22 **Q. Okay. That's what I'm trying to ask. I'm**
23 **trying to ask only what your memory is, not necessarily**
24 **what you've learned from other sources.**

25 **As far as your memory, did you have the most**

1 **memory of the incident at the time you met with the**
2 **GBI --**

3 A. Yes.

4 **Q. -- as opposed to your discovery responses**
5 **and as opposed to sitting here today?**

6 A. Yes.

7 MS. PARKER: Okay. That's all.

8 (At the conclusion of another deposition,
9 Todd Cook's deposition continued as follows.)

10 MS. VARNELL: I forgot to make the
11 interrogatories an exhibit to the deposition, if I can
12 do that now.

13 (Defendant Todd Cook's Answers
14 to Plaintiff's First Set of
15 Interrogatories and Request
for Production of Documents
was marked Exhibit No. 11.)

16 FURTHER THIS DEPONENT SAITH NOT

17 (SIGNATURE WAIVED)
18
19
20
21
22
23
24
25

REPORTER'S CERTIFICATION

STATE OF TENNESSEE :

:

COUNTY OF HAMILTON :

I, Debra L. Huntoon, LCR #376, Licensed Court Reporter and Notary Public, in and for the State of Tennessee, do hereby certify that the above proceeding was reported by me and that the foregoing sixty-nine pages of the transcript are a true and accurate record to the best of my knowledge, skills, and ability.

I further certify that I am not related to nor an employee of counsel or any of the parties to the action, nor am I in any way financially interested in the outcome of this case.

I further certify that I am duly licensed by the Tennessee Board of Court Reporters as a Licensed Court Reporter as evidenced by the LCR number and expiration date following my name below.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 3rd day of July, 2019.



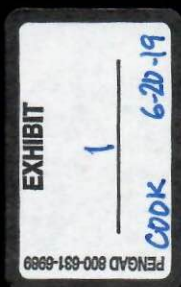
DEBRA L. HUNTOON, LCR #376

LCR Expiration Date: 06/30/20

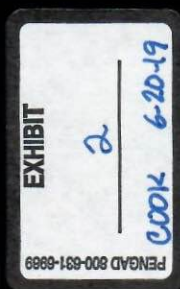
Notary Public Commission

Expiration Date: 02/22/21.

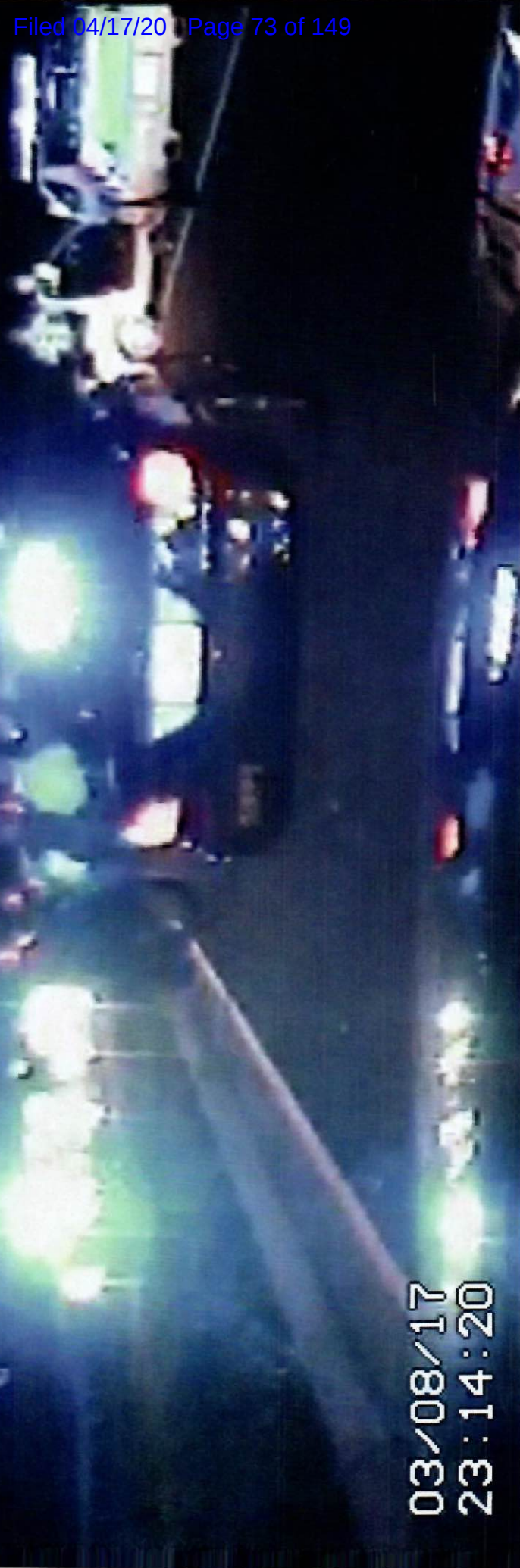
EXHIBITS



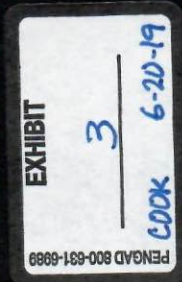
03/08/17
23:14:15



03/08/17
23:14:20



03/08/17
23:14:21



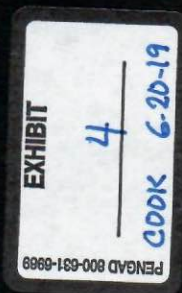
03/08/2017 23:20:20



2755hs

HCSO

03/08/2017 23:22:13



COOK

B

2755hs

HCSO



PENGAD 800-631-6989
EXHIBIT
5
COOK 6-20-19

03/08/2017 23:23:24

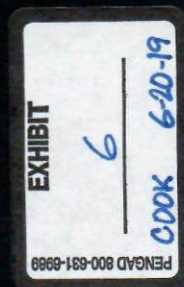
Baxter



2755hs

HCSO

03/08/2017 23:15:59



2755hs

HCSO

03/08/2017 23:16:00



2755hs

HCSO

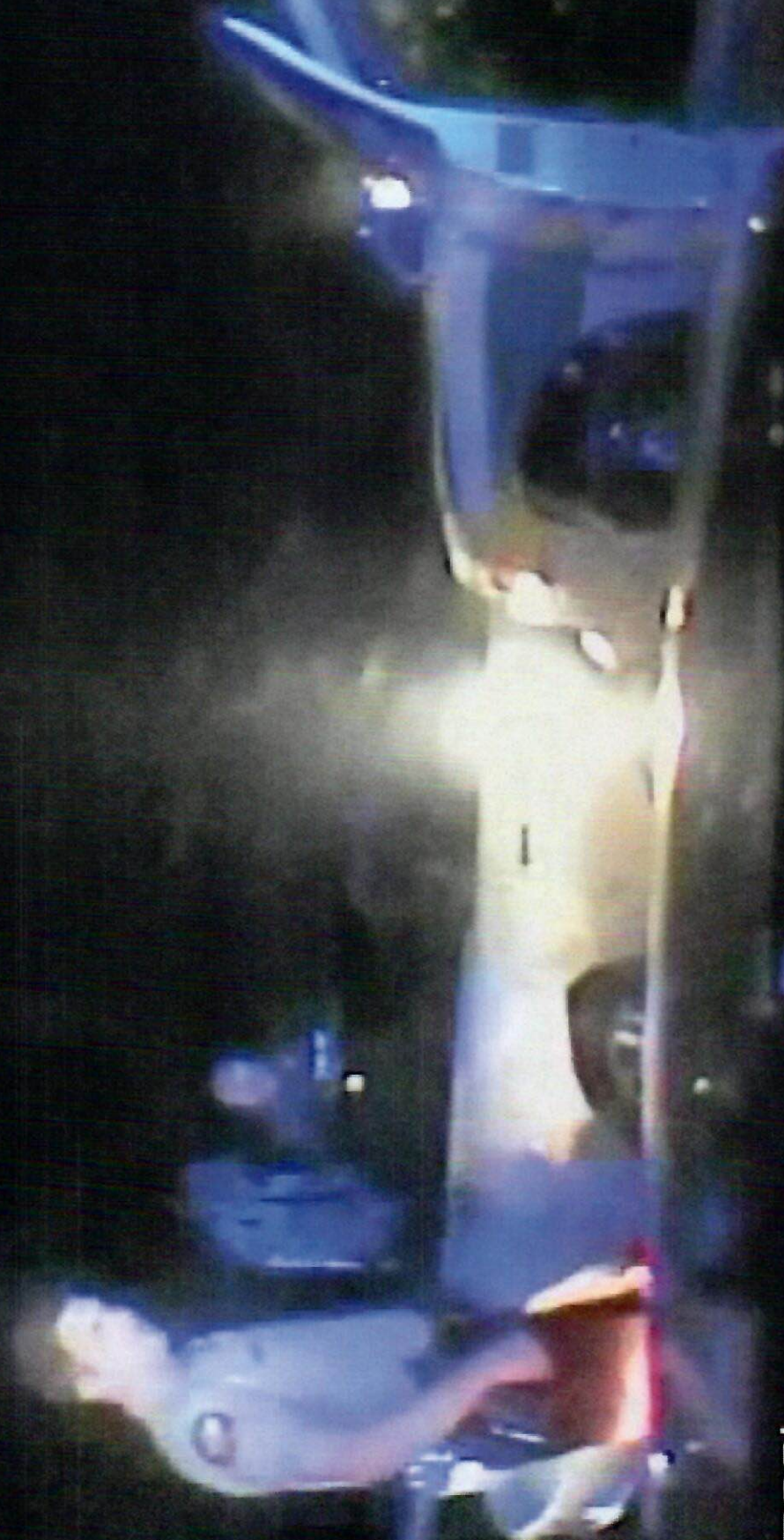
03/08/2017 23:16:04

2755hs

HCSO



03/08/2017 23:16:55



2755hs

HCSO

03/08/2017 23:16:57



2755hs

HCSO

03/08/2017 23:17:25



2755hs

HCSO

03/08/2017 23:17:49



2755hs

HCSO

03/08/2017 23:18:12



2755hs

HCSO

03/08/2017 23:18:33



2755hs

HCSO

03/08/2017 23:19:00

2755hs

HCSO



03/08/2017 23:19:19

2755hs

HCSO



03/08/2017 23:19:40

2755hs

HCSO



03/08/2017 23:19:43



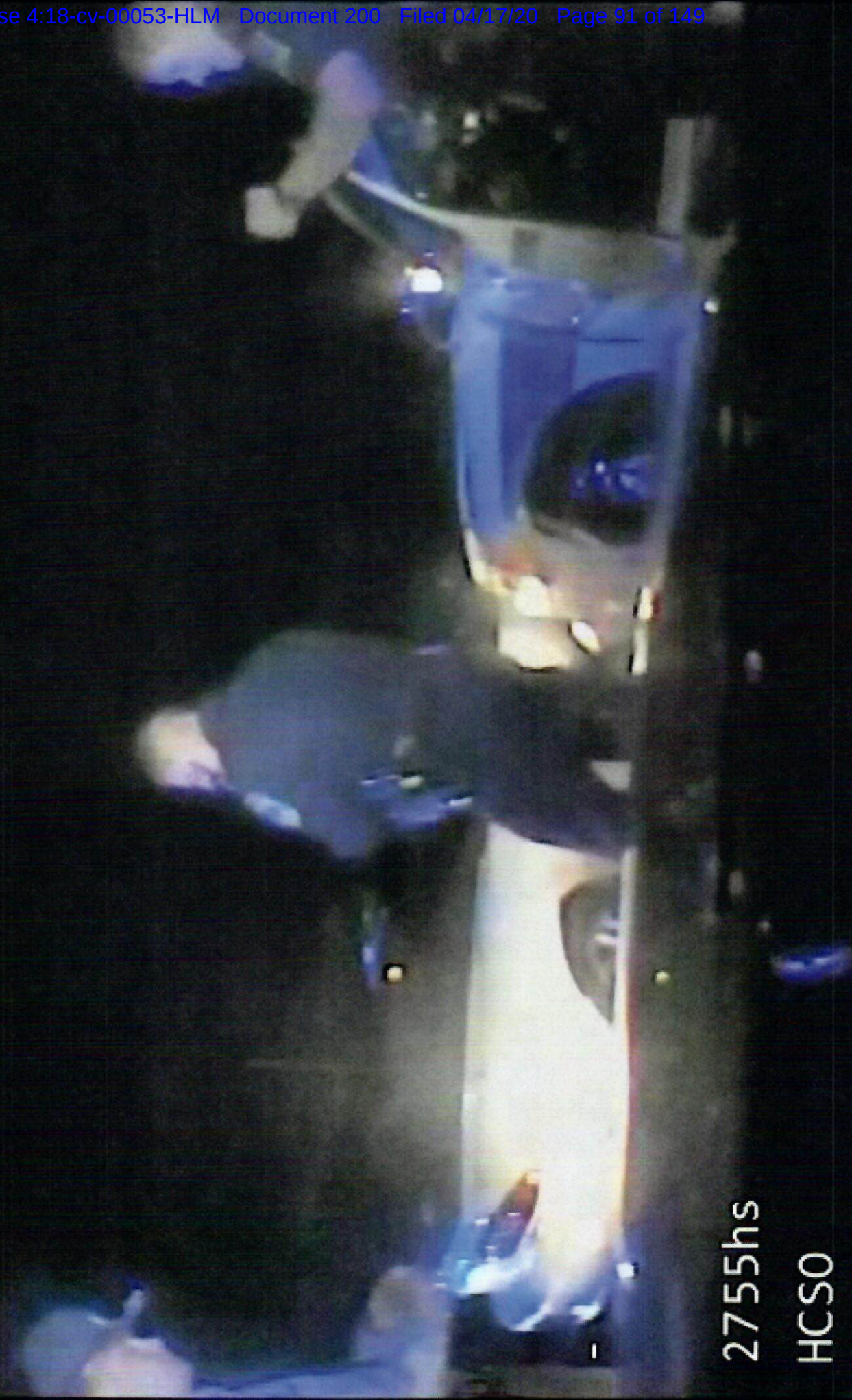
2755hs

HCSO

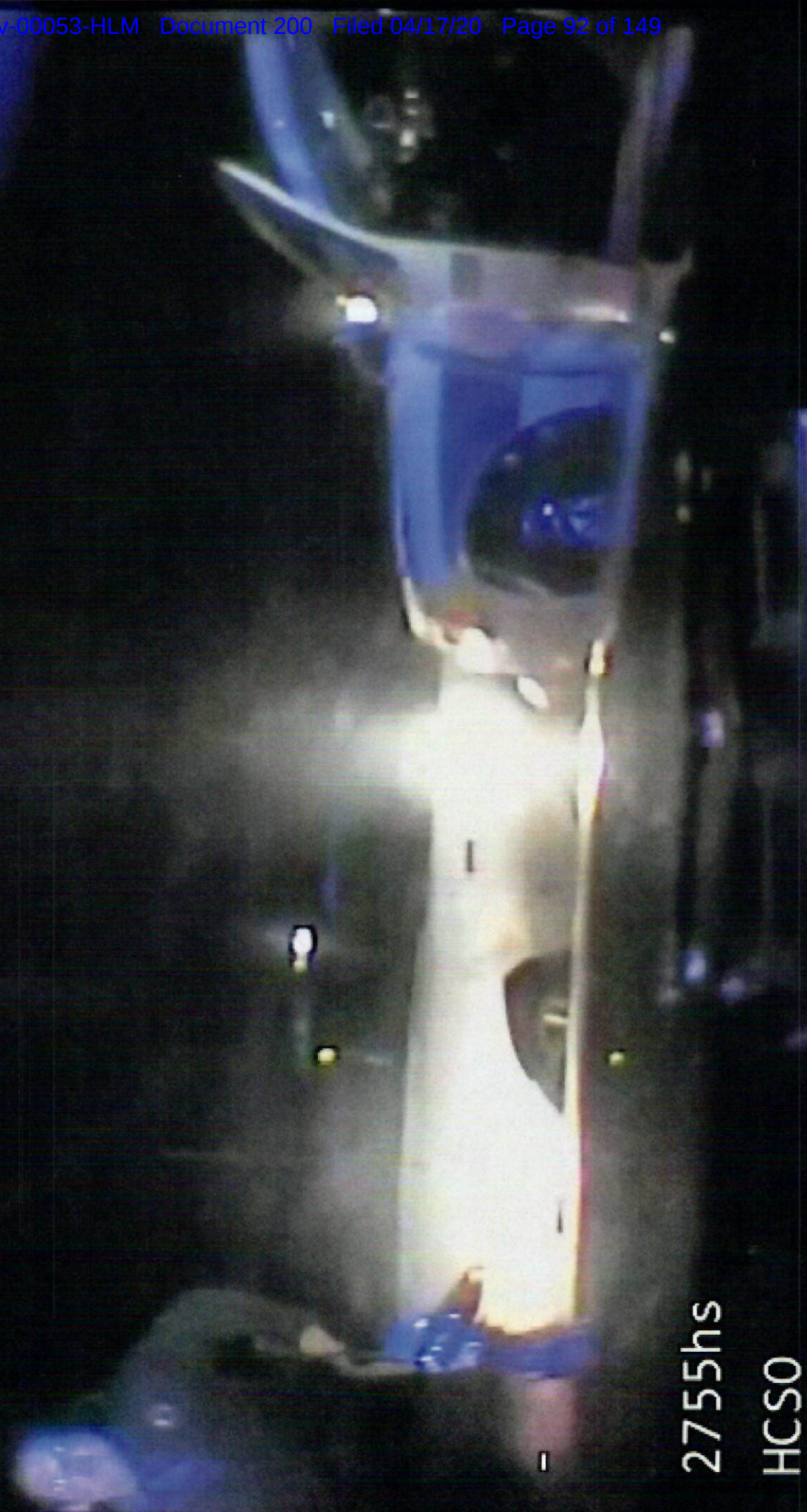
03/08/2017 23:20:15

2755hs

HCSO



03/08/2017 23:23:57



2755hs

HCSO

03/08/2017 23:24:04



2755hs

HCSO

03/08/2017 23:24:02



2755hs

HCSO

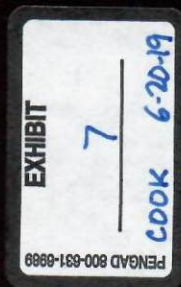
597

1500hs

W L A

03/08/2017 23:13:06

COOK



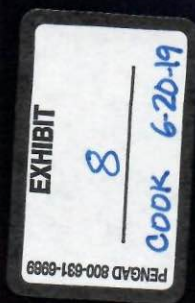
597

1500hs

W L A

03/08/2017 23:14:08

cook



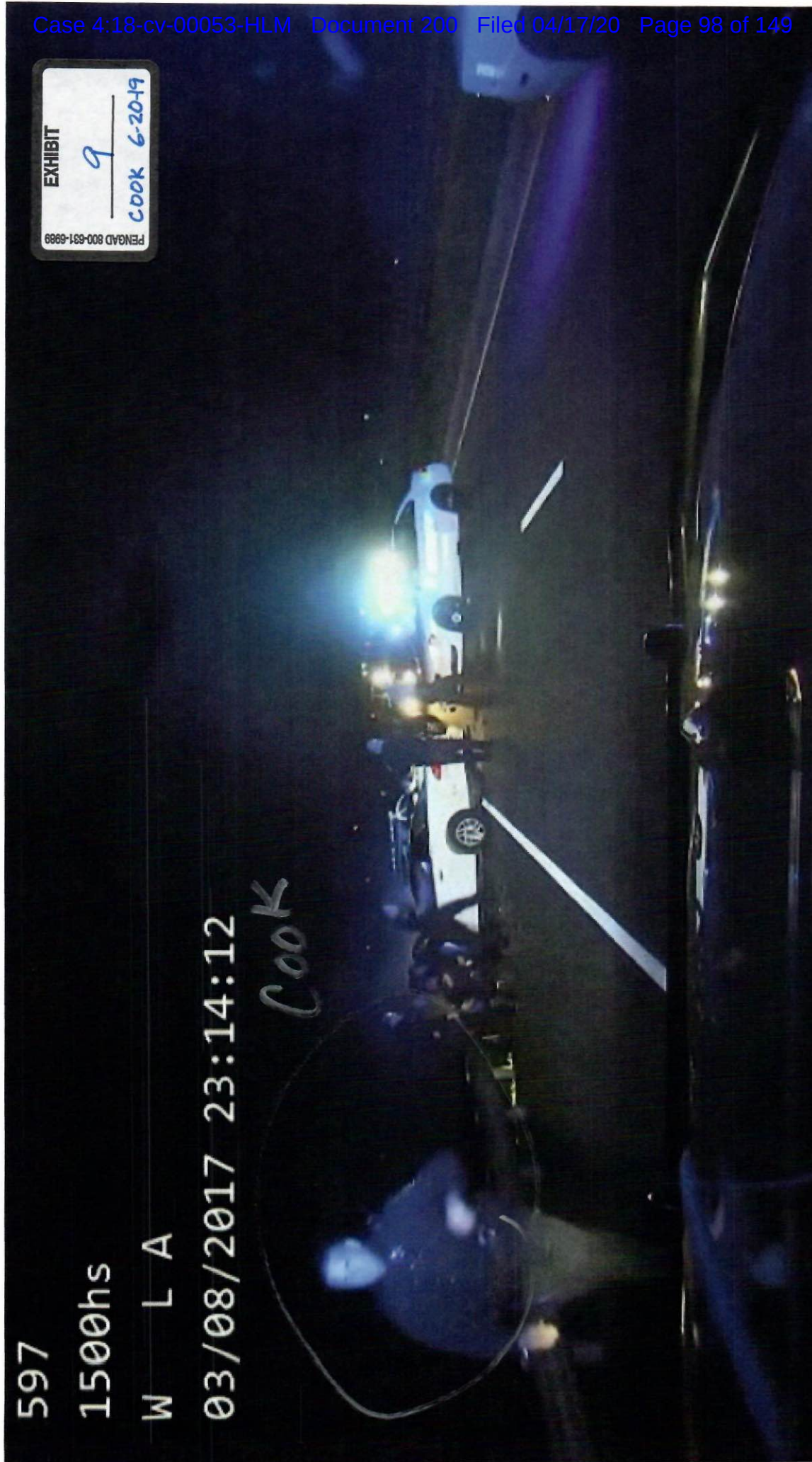
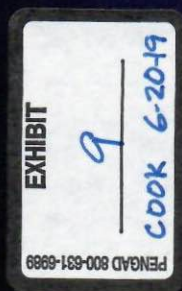
597

1500hs

W L A

03/08/2017 23:14:12

Cook

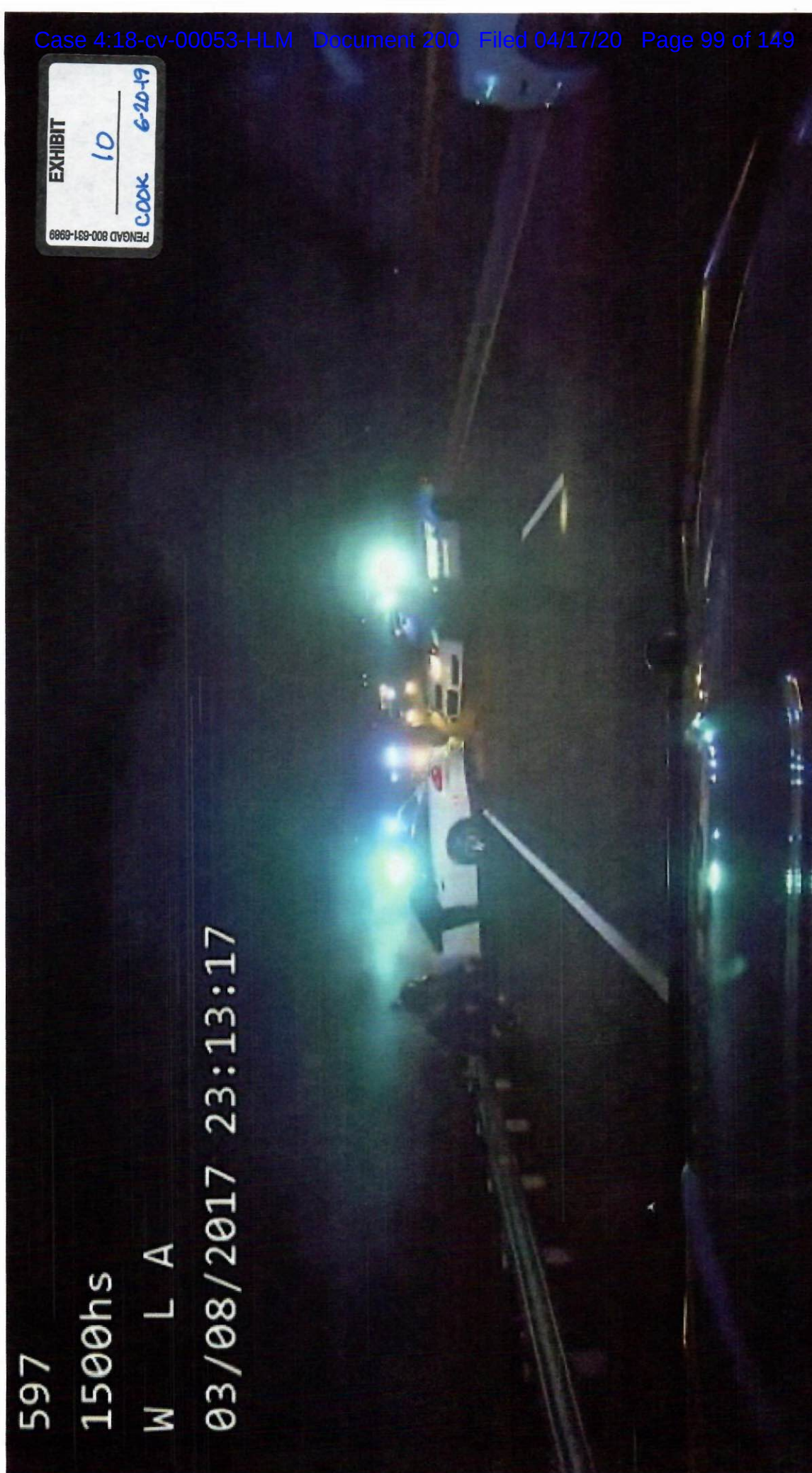
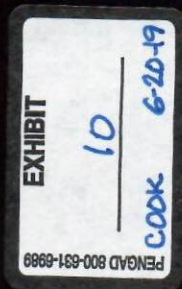


597

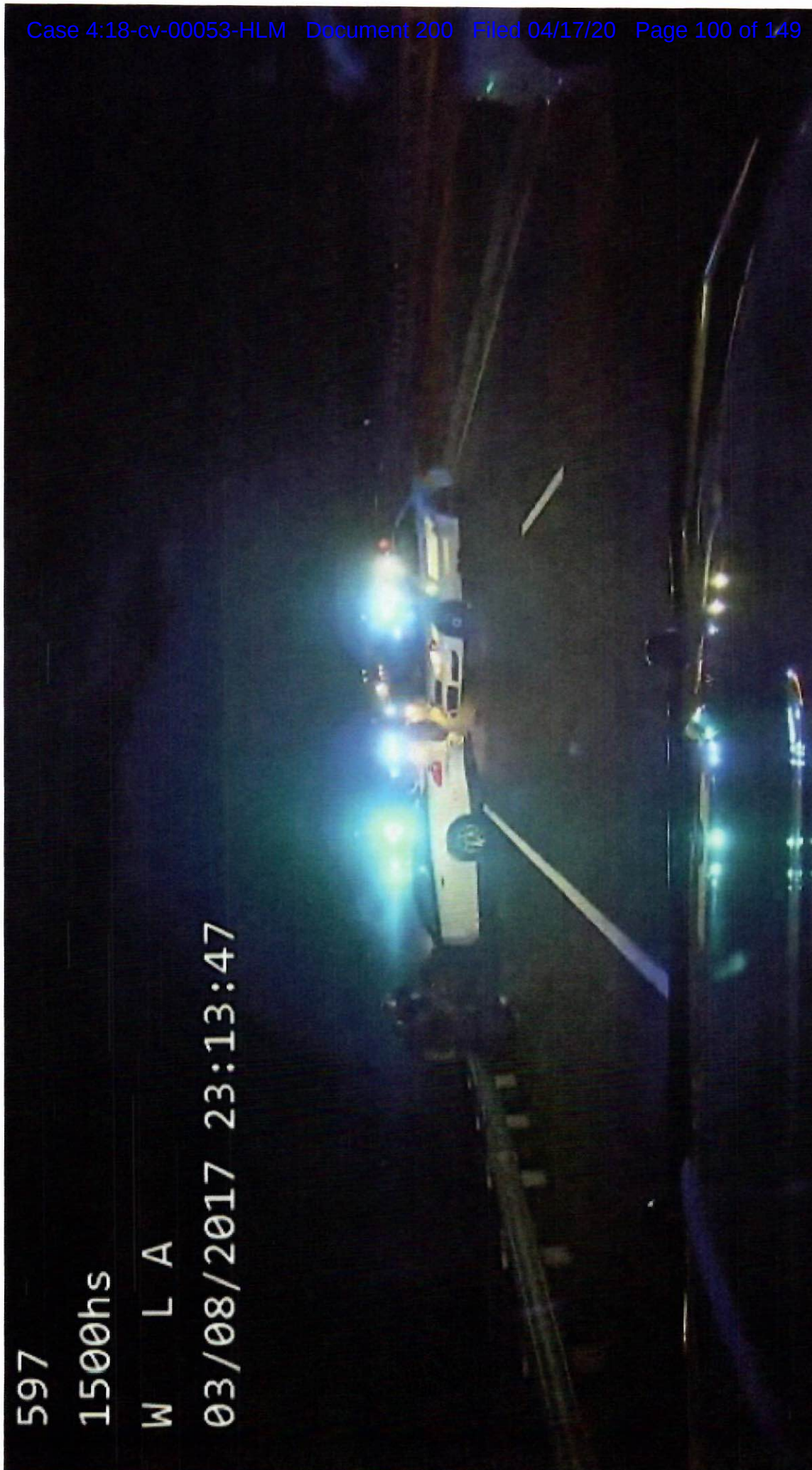
1500hs

W L A

03/08/2017 23:13:17



597
1500hs
W L A
03/08/2017 23:13:47

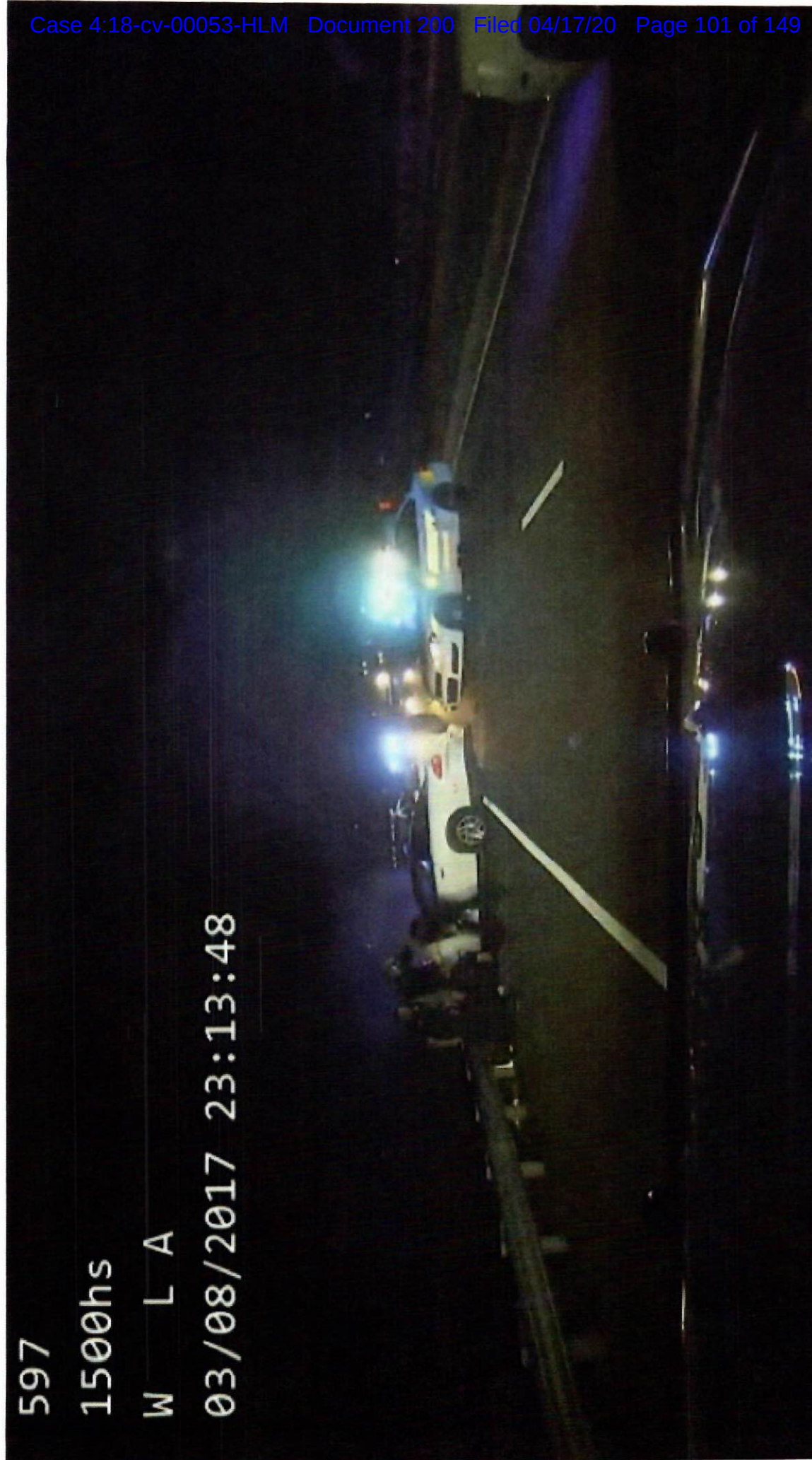


597

1500hs

W L A

03/08/2017 23:13:48

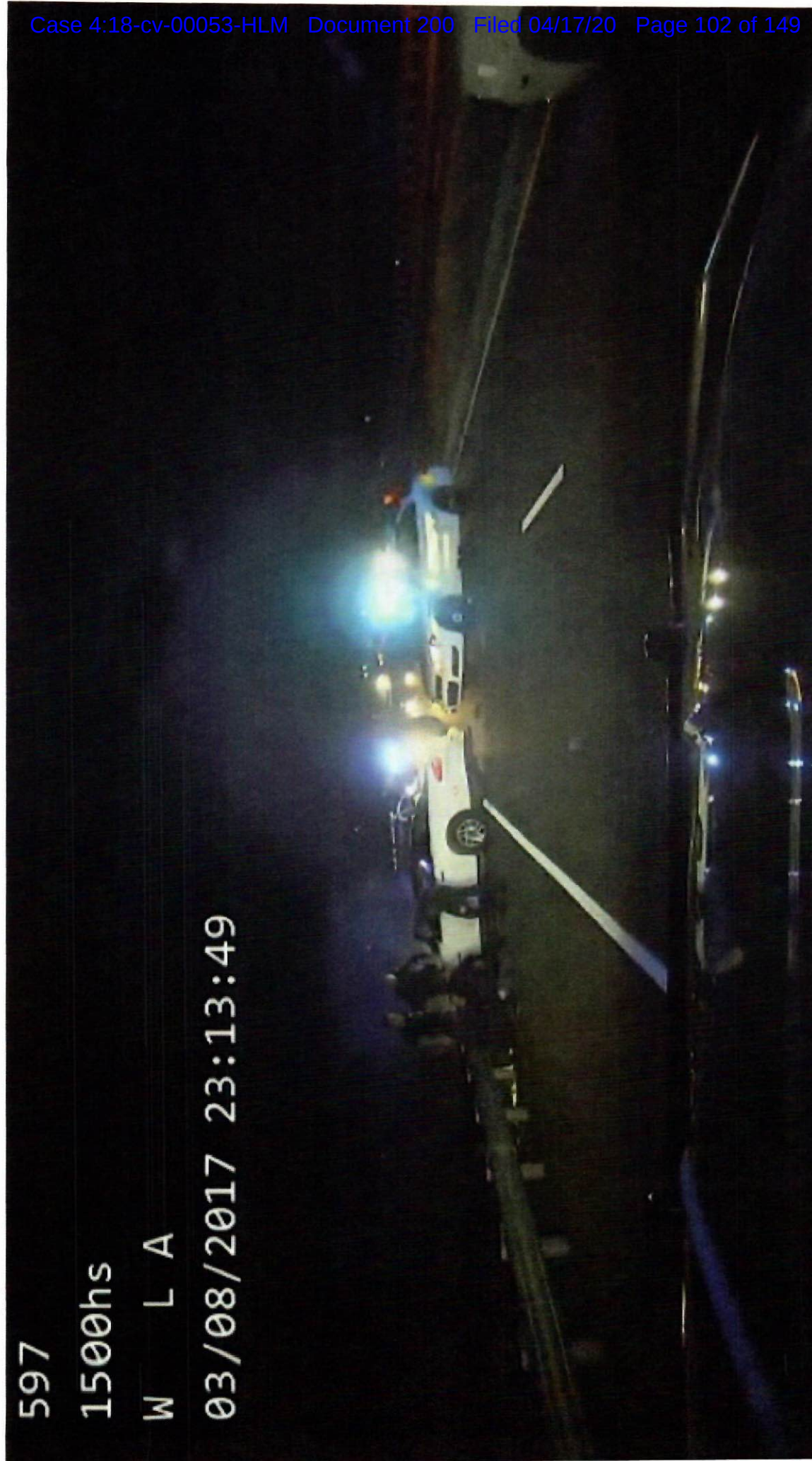


597

1500hs

W L A

03/08/2017 23:13:49

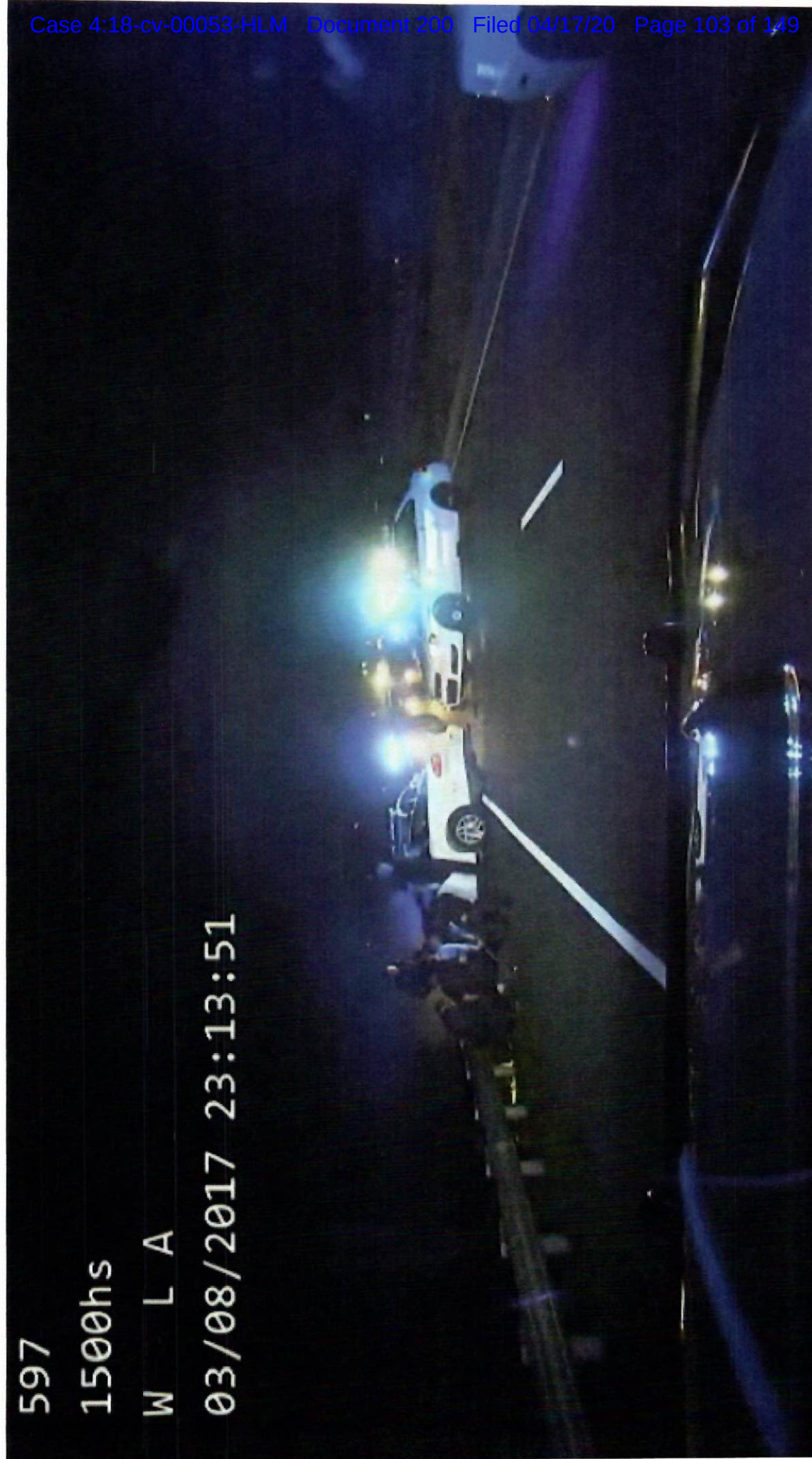


597

1500hs

W L A

03/08/2017 23:13:51

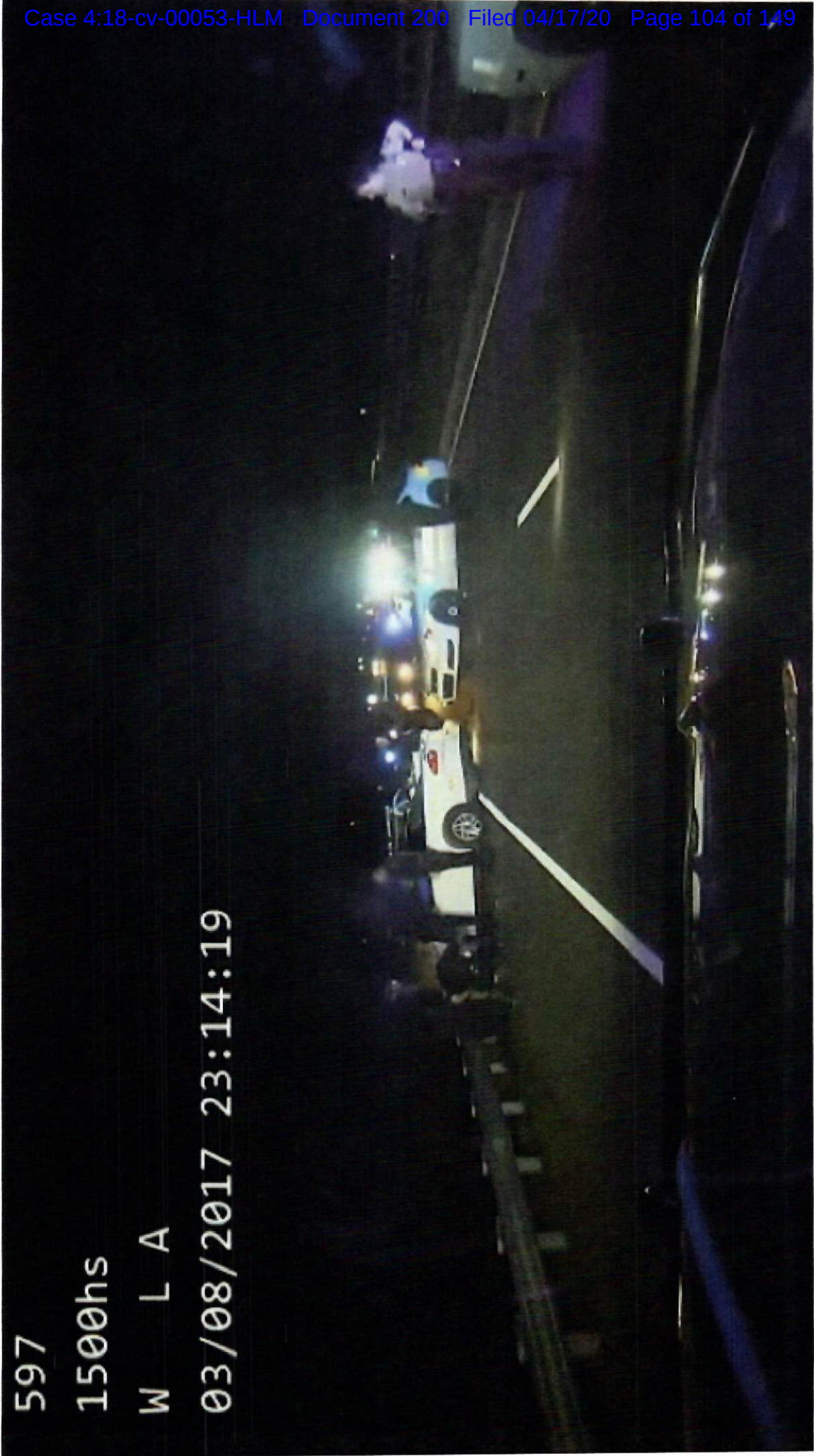


597

1500hs

W L A

03/08/2017 23:14:19

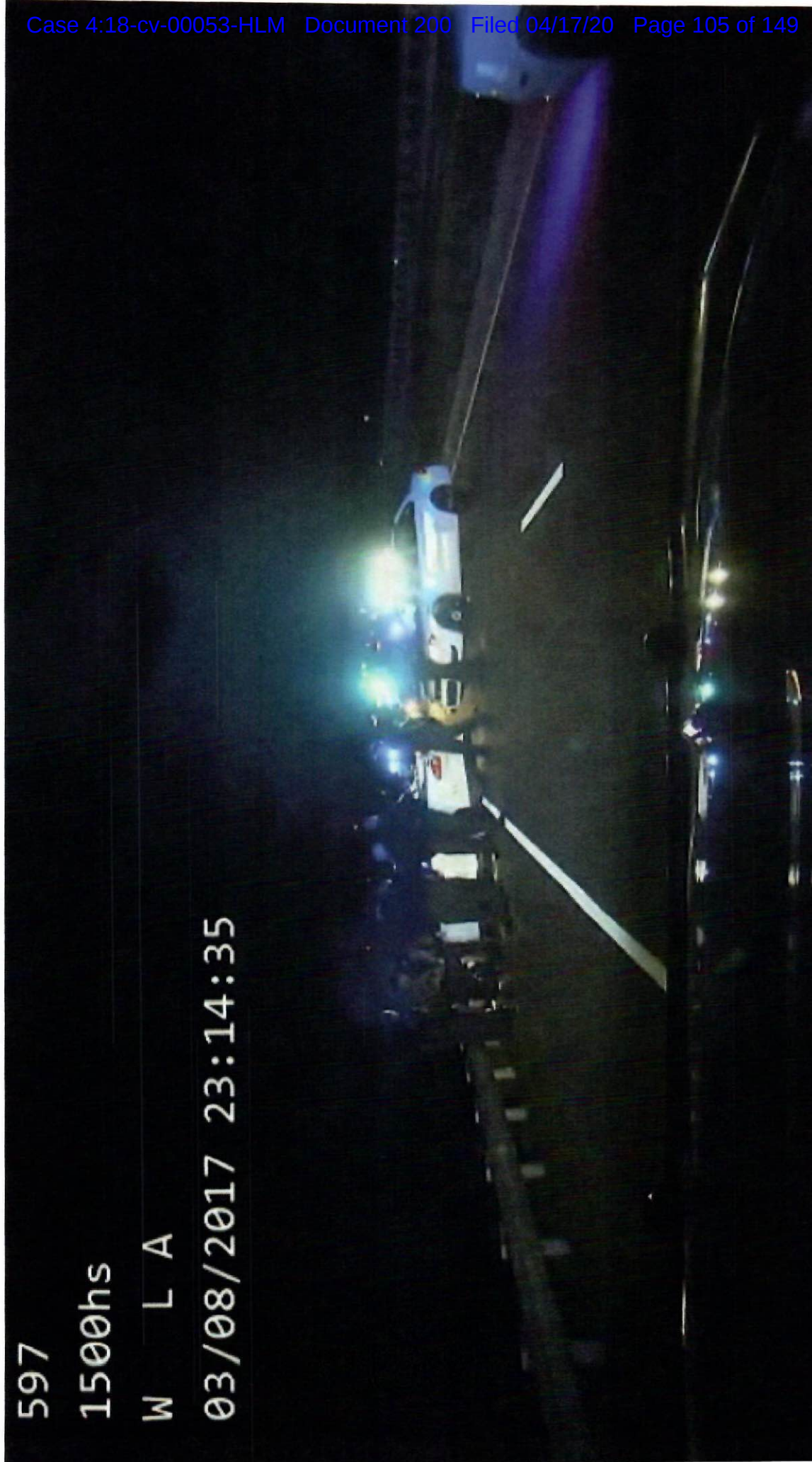


597

1500hs

W L A

03/08/2017 23:14:35



597

1500hs

W L A

03/08/2017 23:15:27

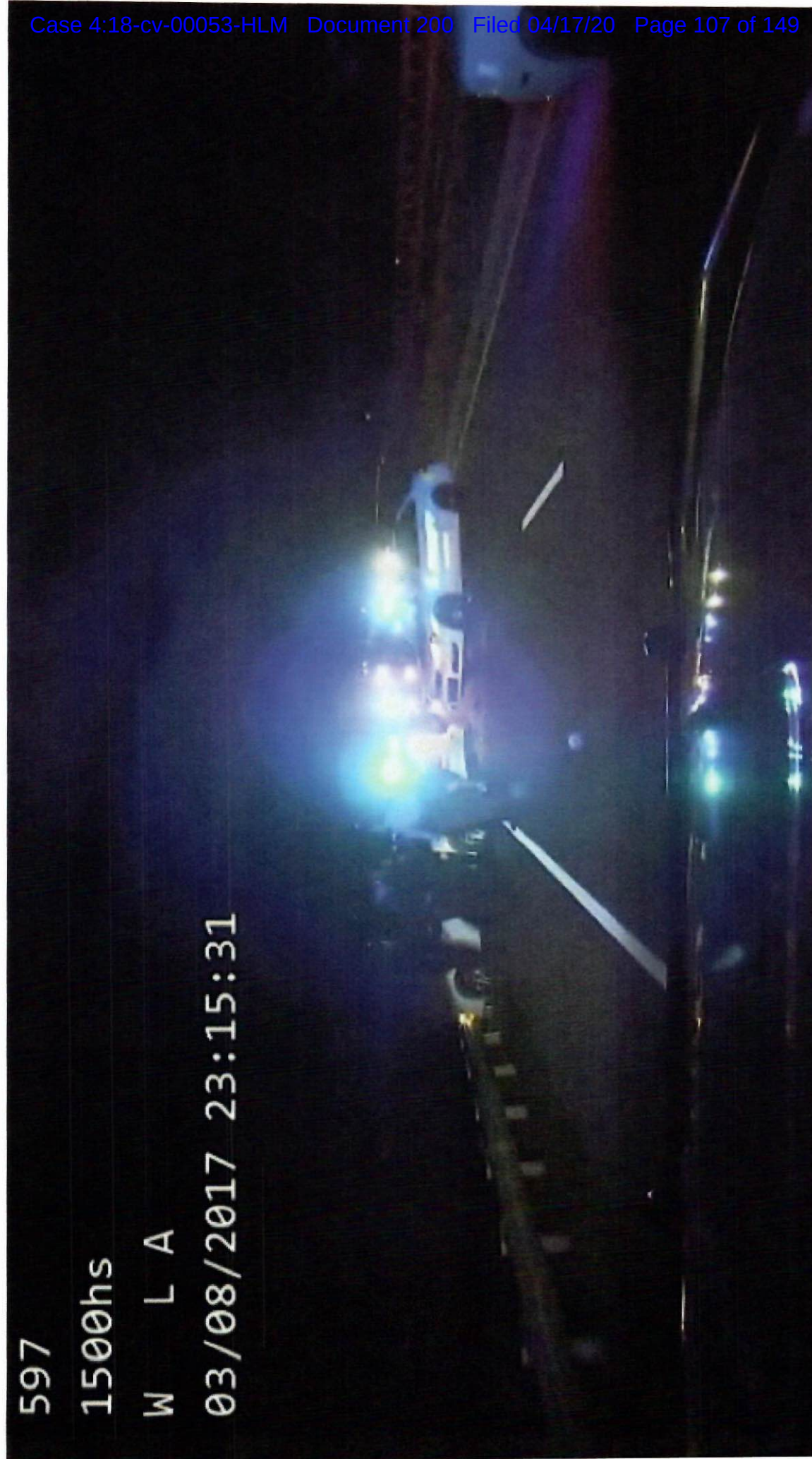


597

1500hs

W L A

03/08/2017 23:15:31

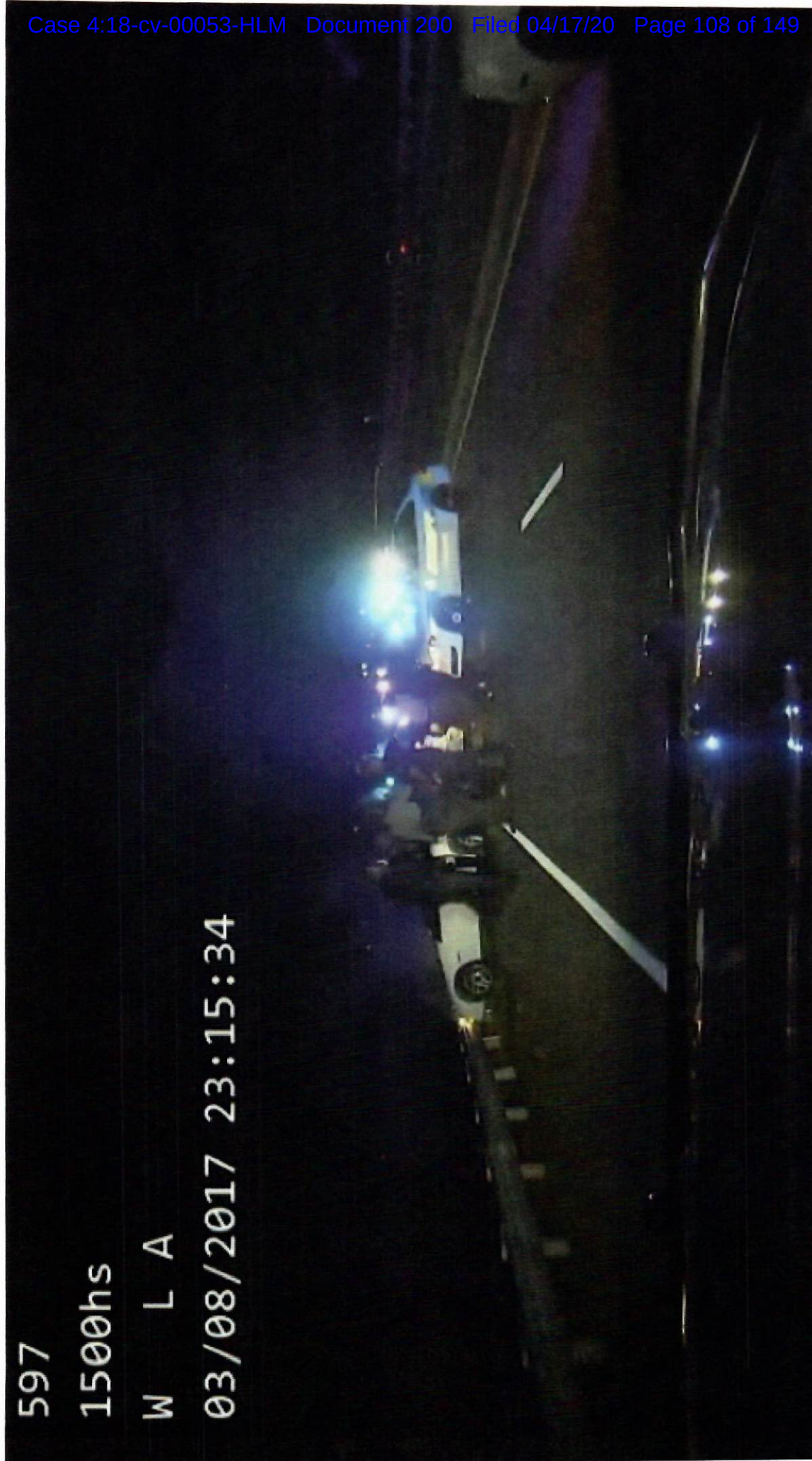


597

1500hs

W L A

03/08/2017 23:15:34



597

1500hs

W L A

03/08/2017 23:15:35

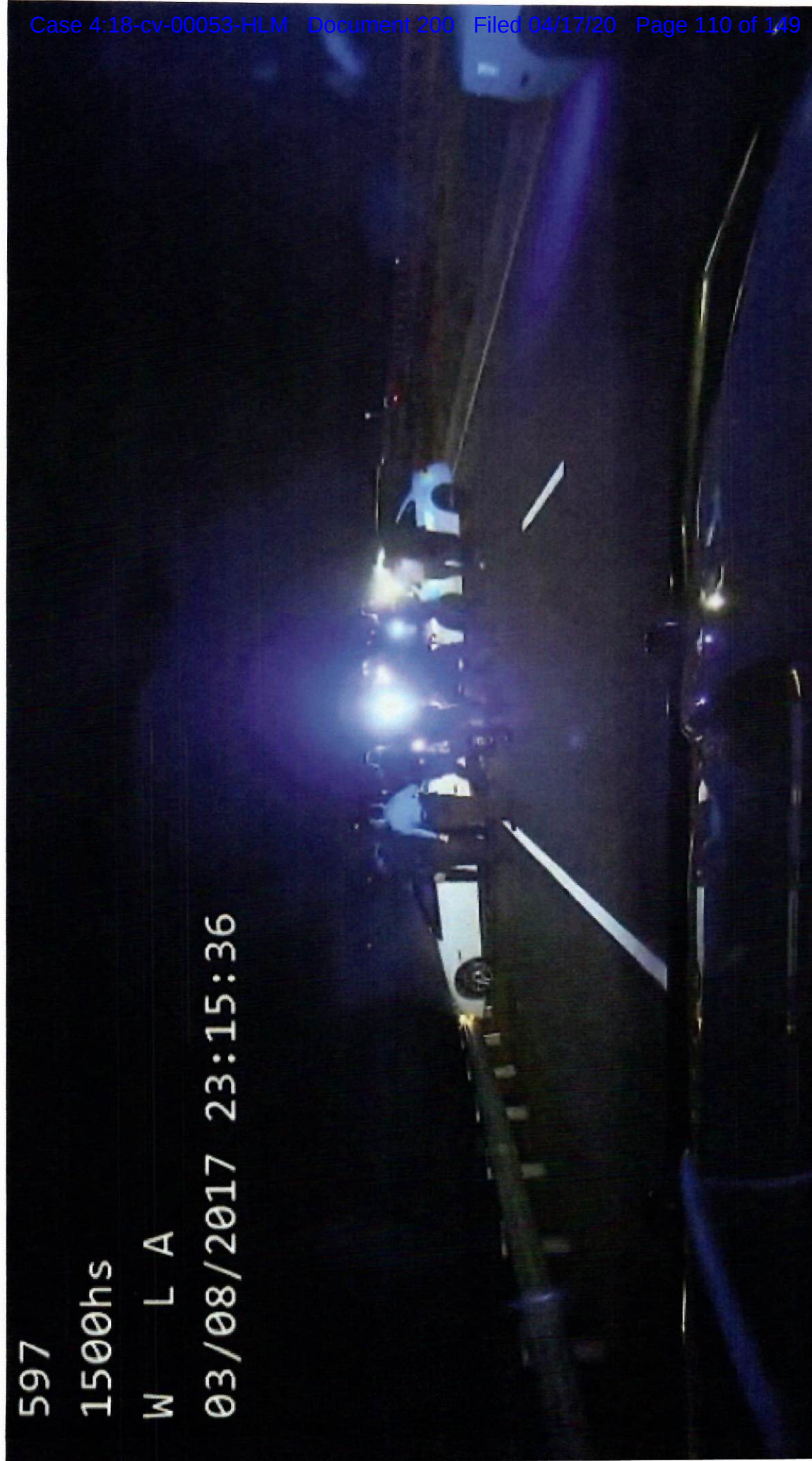


597

1500hs

W L A

03/08/2017 23:15:36



597
1500hs
W L A
03/08/2017 23:15:37



597

1500hs

W L A

03/08/2017 23:15:38

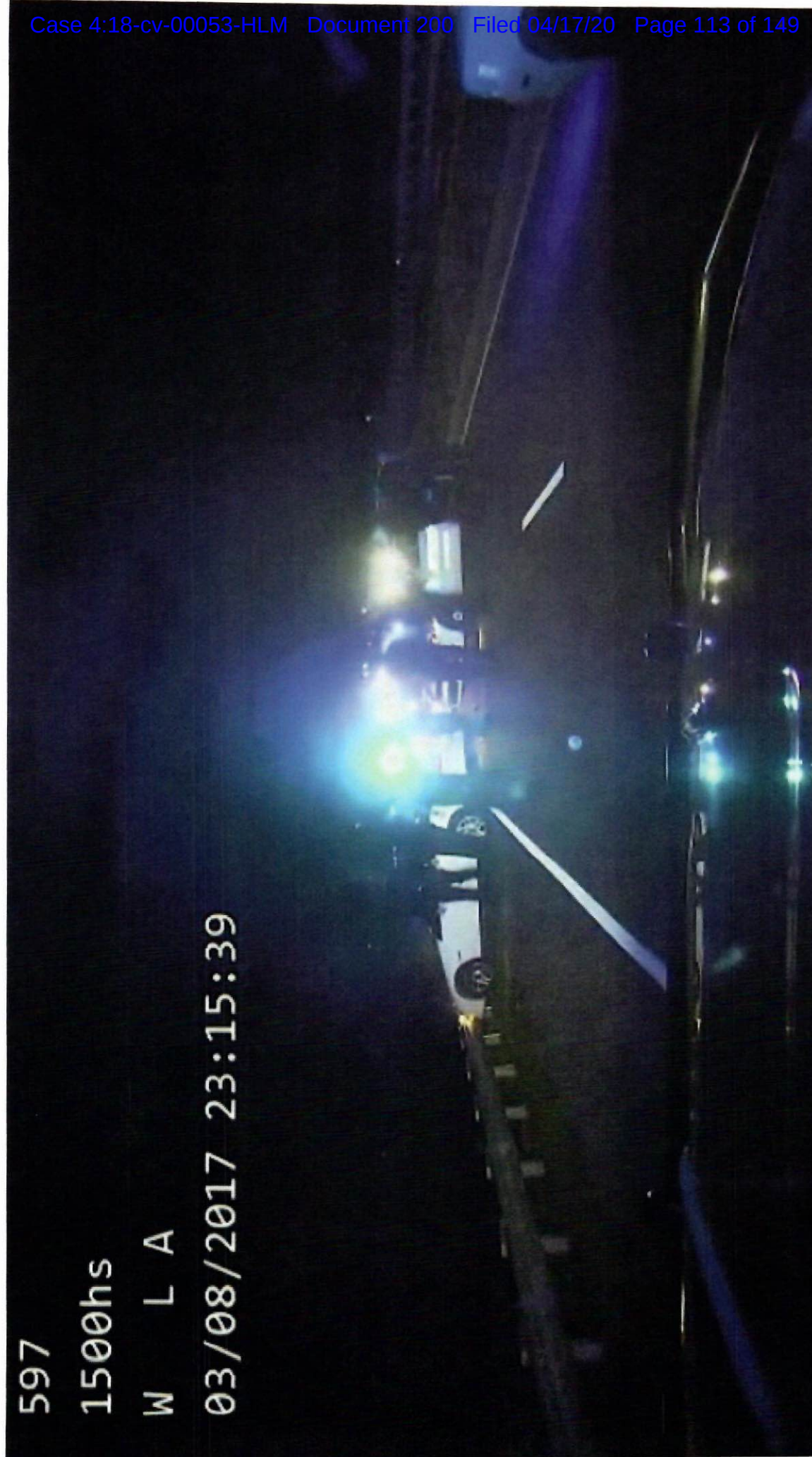


597

1500hs

W L A

03/08/2017 23:15:39

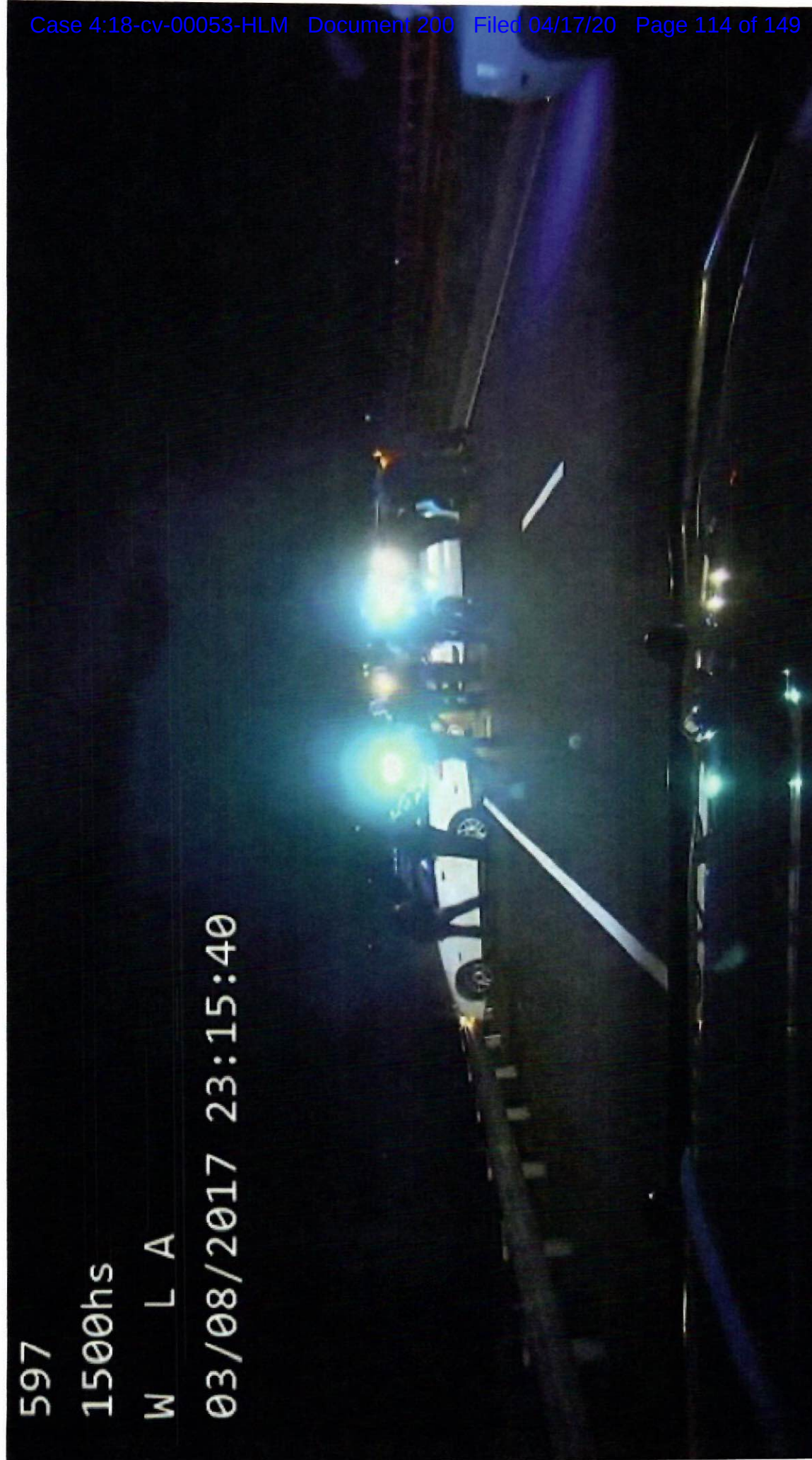


597

1500hs

W L A

03/08/2017 23:15:40



597

1500hs

W L A

03/08/2017 23:15:41



597

1500hs

W L A

03/08/2017 23:15:43

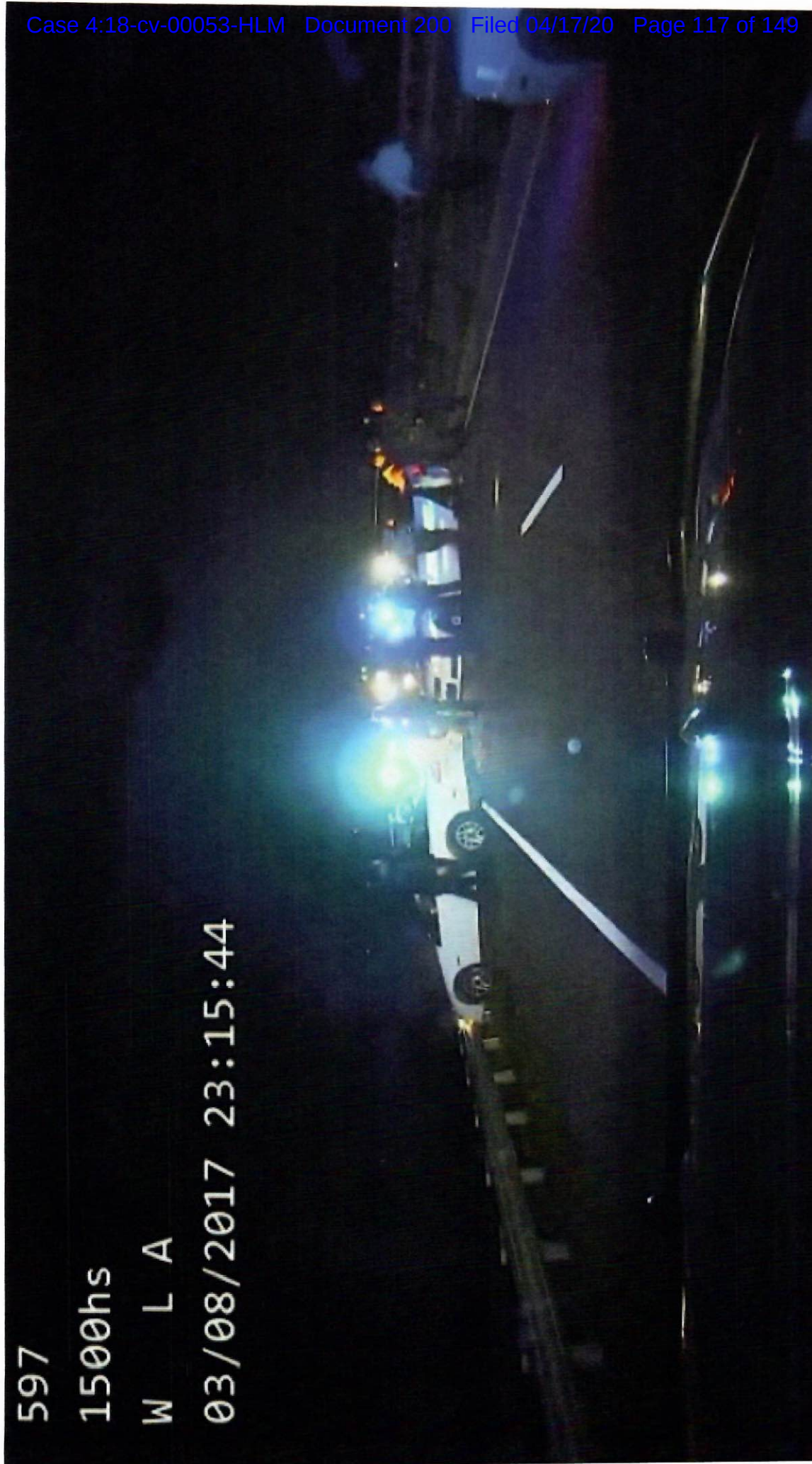


597

1500hs

W L A

03/08/2017 23:15:44

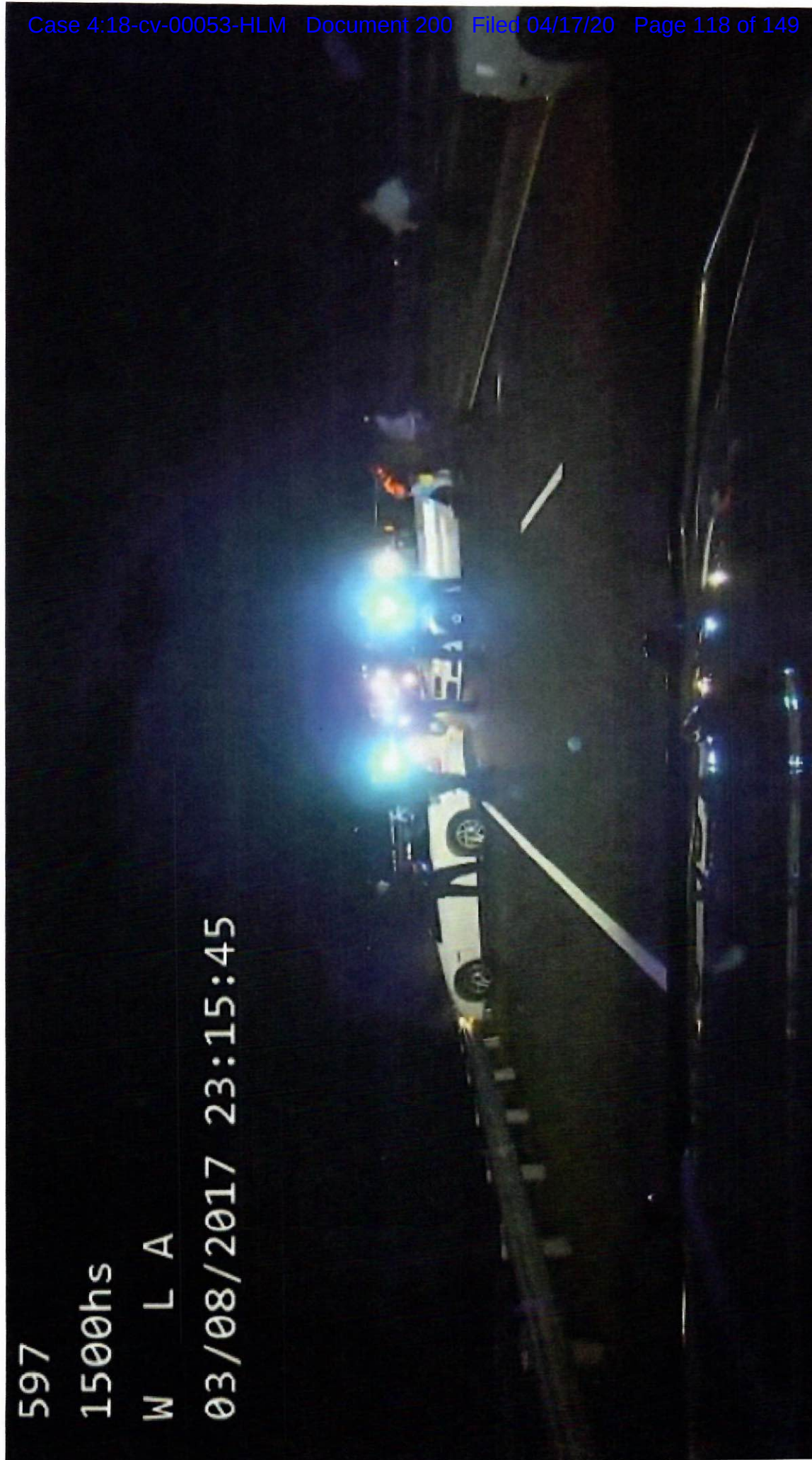


597

1500hs

W L A

03/08/2017 23:15:45

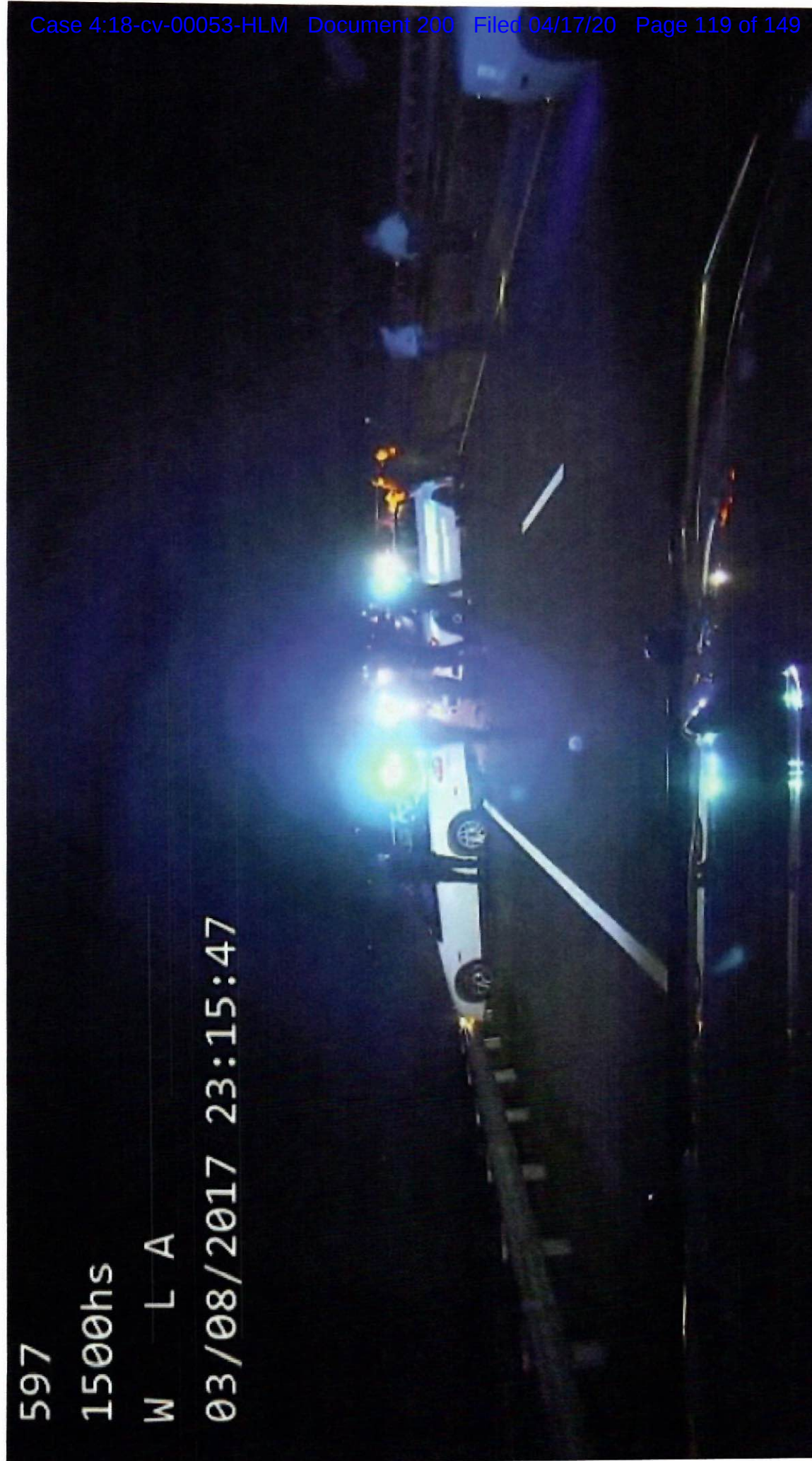


597

1500hs

W L A

03/08/2017 23:15:47

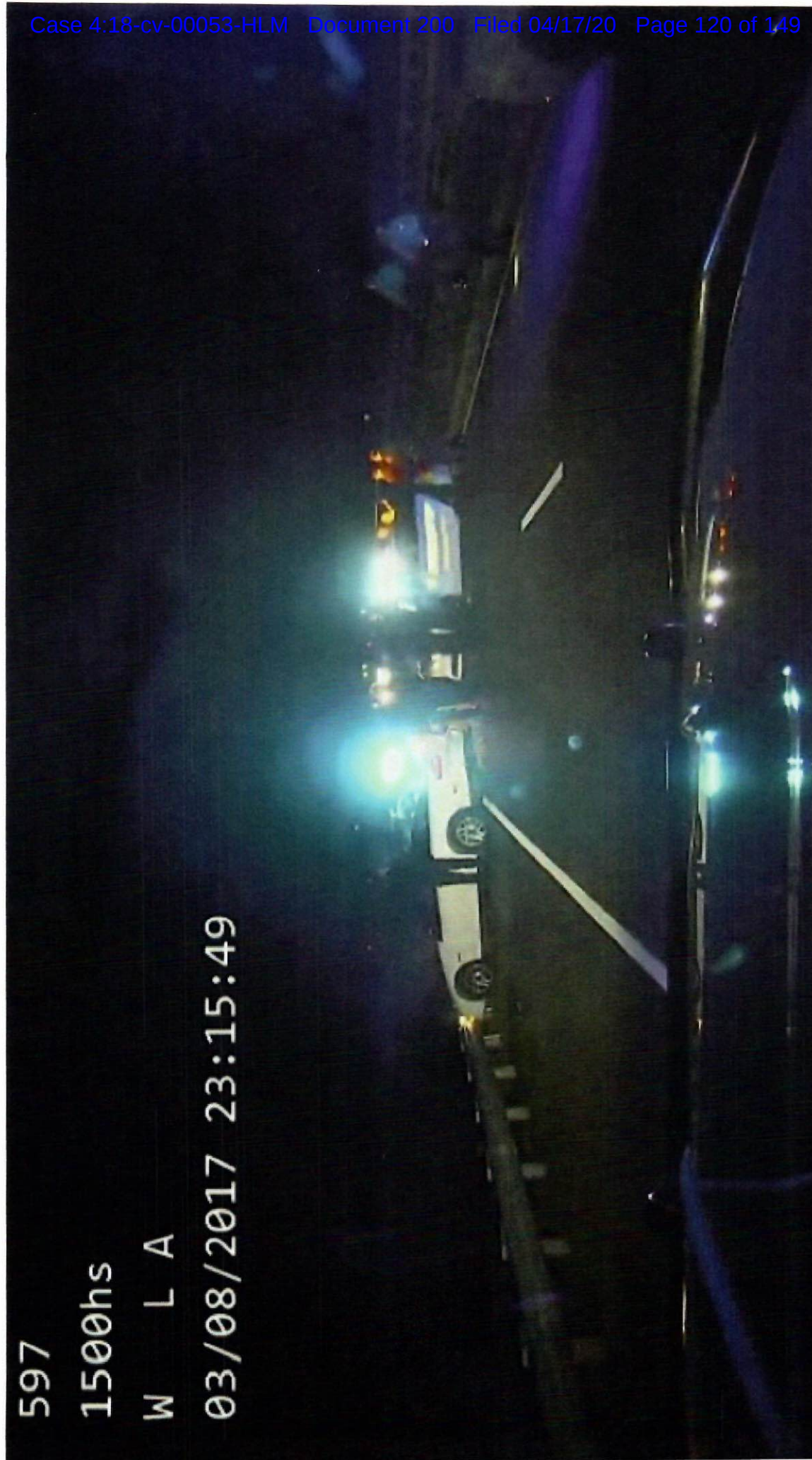


597

1500hs

W L A

03/08/2017 23:15:49



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

PHILLIP WAYNE KOGER,

Plaintiff,

V.

CASE NO. 4:18-CV-00053-HLM

STEPHEN BAGLEY, individually and in his official capacity;

GREGG CARSON, individually and in his official capacity; **TODD COOK**,

individually and in his official capacity;

JAMES DAVIS, individually and

in his official capacity; DYLAN FLOYD,

individually and in his official capacity;

and ANTHONY LAWSON, individually

and in his official capacity;

Defendants.

**DEFENDANT TODD COOK'S ANSWERS TO
PLAINTIFF'S FIRST SET OF INTERROGATORIES AND
REQUEST FOR PRODUCTION OF DOCUMENTS**

Comes now Defendant, Todd Cook, by and through counsel, pursuant to Fed. R. Civ. P. 33 and 34 and provides responses to Plaintiff's First Set of Interrogatories and Request for Production of Documents as follows:



INTRODUCTION

These responses are made solely for the purpose of this action. These responses, including any production of documents, are subject to the terms and conditions of any protective order(s) that may be entered in this action.

Defendant has not yet completed its investigation of the facts relating to this action and has not yet completed its preparation for trial. The following responses are thus given without prejudice to Defendant Cook's right to produce subsequently discovered material. Defendant Cook specifically reserves the right to supplement its responses or any other responses not contained herein pursuant to applicable Rules of Civil Procedure and any local rules of court.

By this production, Defendant Cook does not admit the relevance of any document that is produced. No admission of any nature whatsoever is to be implied or inferred from these responses and/or documents.

Defendant specifically reserves its right to assert privilege for any privileged document that is inadvertently produced in response to these requests. In the event such documents are inadvertently produced, the inadvertent production by Defendant Cook of a document containing attorney-client communication, attorney work-product, or otherwise privileged information shall not constitute a waiver of privilege and such document or documents shall be returned to Defendant Cook immediately upon such request. Included in this reservation are not only

documents promulgated by Defendant Cook but also any documents produced by Defendant Cook that may have been promulgated by others.

GENERAL OBJECTIONS

1. Defendant Cook objects to each and every Request for Production to the extent it calls for the production of privileged documents, including documents protected by the attorney-client privilege, investigative privilege, consulting expert exemption, documents containing work product, and documents prepared in anticipation of litigation or trial. Defendant Cook further objects to each and every Request for Production to the extent it seeks the disclosure of the identities of, or any work generated by, non-testifying consulting experts retained by or at the direction of Defendant Cook's attorneys in anticipation or preparation for this and/or other threatened or pending litigation or in connection with the rendering of legal advice to Defendant. No restatement of any specific objection in the context of these answers shall be construed to imply a waiver of any unstated privilege objections addressed by this General Objection.

2. Defendant Cook objects to each and every Request for Production to the extent it attempts to impose a duty on Defendant Cook to produce documents that are available from other entities not parties in this litigation and to the extent it seeks materials that are available to the public.

3. Defendant Cook objects to each and every Request for Production to the extent it is overly broad, burdensome and oppressive, and seeks documents neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Defendant is performing a reasonable inquiry and search for documents as required by the applicable Rules of Civil Procedure; however, it is possible that even those Requests that appear reasonable in scope on their face may, in fact, call for the production of information or certain documents that are irrelevant or not reasonably calculated to lead to the discovery of admissible evidence. Defendant Cook preserves its objection to each such Request for Production to the extent it calls for the production of such documents.

4. Defendant Cook objects to every Request for Production that uses language such as “each and every” or similarly broad language. Such a Request for Production is onerous, burdensome, harassing, prejudicial, and overly broad. Each Request for Production asking “any and all” or “each and every” is objectionable in that such an inquiry, in essence, is a request for evidence and not discoverable information. See, e.g., *United States v. Renault, Inc.*, 27 F.R.D. 23, 26-27 (S.D.N.Y. 1960). Moreover, Defendant Cook has no possible means of making the all-encompassing identification such a broadly worded Request for Production requires.

5. Defendant Cook is contacting those persons who have knowledge of the location and/or existence of information that may be responsive. To the extent that Plaintiff's requests or any portion thereof seek to require this Defendant to take any actions other than those enumerated above, such as identifying "all persons" having knowledge or identifying "all documents" concerning the subject of the Request for Production, this Defendant objects to said Request for Production on the grounds that it is unduly burdensome and oppressive.

6. Defendant Cook objects to each and every Request for Production to the extent that it requires Defendant to produce documents created for it by other parties in that such a Request for Production is vague, ambiguous, and overly broad. Additionally, such a Request for Production is broad enough to include information protected by the attorney-client privilege, the attorney work product doctrine, investigative privilege, and the consulting expert exemption.

7. Each Response herein is subject to all objections as to competence, relevance, materiality, propriety, admissibility, and any and all other objections and grounds to which the same statement would be subject if delivered in live testimony in court. All such objections and grounds are expressly reserved by Defendant and may be interposed at the time of trial or in conjunction with other uses of the Responses.

INTERROGATORY ANSWERS

1. As to the person(s) answering these interrogatories, please state your full name, your address, your employer's name and business address, your job title, and the length of time you have been so employed.

**ANSWER: Todd Cook
 Traffic Investigator
 Hamilton County Sheriff's Department
 Employed 24 years**

2. Identify each person, known to you or the defendant, its employees, its agents, its attorney, or its insurance company, who allegedly heard, saw, or claims to have done so, or claims to have any information or knowledge concerning any of the matters set forth in any of the pleadings filed in this lawsuit. **[Please take notice that the plaintiffs will object to the introduction of any testimony from any person testifying on the defendant's behalf who is not identified in the answer to this interrogatory.]**

ANSWER: Objection. It is impossible for this Defendant to know each and every person who may have witnessed or have personal knowledge of the events complained of in this matter. Furthermore, discovery is ongoing, and this response may be amended at any time.

Without waiving these objections, upon information and belief, the following people have knowledge of this matter:

- Phillip Koger
- Gregory Carson
- Stephen Bagley
- James Davis
- Dylon Floyd
- Anthony Lawson
- Jim Hammond
- Mike Helton
- Gary Sisk
- Michael Cannon
- John McGrath
- Brittany Gilleland
- Brandon Bennett
- Jason Smith
- Ricky Jones
- Employees from Cornerstone Medical Center, Puckett EMS, and Erlanger Health Systems.
- Any person identified in any other discovery responses by any other party.

3. For each person(s) identified in the answer to the foregoing interrogatory, describe in detail the facts that person(s) has or claims to have concerning this case.

ANSWER:

Objection. It is impossible for this Defendant to know facts known of each and every person may have or claims to have concerning this case. Defendant further objects to this Interrogatory on the grounds that it asks this Defendant to speak to others' knowledge. Without waiving said objection, this Defendant refers to the videos produced by the parties in this case, as well as the statements given to

the Georgia Bureau of Investigation for which facts each person claims to have with regard to this matter.

4. Identify each police officer, sheriff's deputy, or Highway Patrol officer who was present during the pursuit and resulting arrest of Phillip Koger on March 8, 2017. Include in your response the specific title of each individual. If a person is no longer employed, please state that person's current or last known phone number and address.

ANSWER: Please see answer to Interrogatory #4.

5. Identify each person known by you who was present or claims to have been present at the scene when Phillip Koger was taken into custody on March 8, 2017, as set forth in the Second Amended Complaint in this matter.

ANSWER: Phillip Wayne Koger
Greggory Carson
Stephen Bagley
James Davis
Dylon Floyd
Anthony Lawson
Jim Hammond
Mike Helton
Gary Sisk
Michael Cannon
John McGrath
Brittany Gilleland
Brandon Bennett
Jason Smith

6. Describe in detail the acts and events which took place on March 8, 2017, from the beginning of your knowledge of or involvement with Phillip Koger up until you concluded your work related to your interaction with Phillip Koger on that date, including any information as to the initial call that necessitated your involvement in the case. If there is more than one version of events known to you, describe each version separately and its source.

ANSWER: **Objection.** This Interrogatory could seek information protected by the attorney-client privilege. Without waiving this objection, the defendant states as follows:

On March 8, 2017, I was in my patrol unit on Highway 58 in Chattanooga, Tennessee. I was speaking with Deputy Jason Smith in another patrol unit at the same location. While we were conversing, a call came over the radio from Deputy Bennett that he was attempting to pull over a vehicle, but the vehicle was not stopping, and he was requesting assistance. We immediately left our position and proceeded toward Deputy Bennett.

We picked up Deputy Bennett in the pursuit in East Ridge, Tennessee on Ringgold Road. We were instructed to go ahead and lay down spike strips in order to stop Mr. Koger's vehicle. After we did so, Mr. Koger approached the spike strips and went around them and proceeded into the State of Georgia. I rejoined the pursuit and up in front of me an accident occurred between a Hamilton County Sheriff's vehicle and Mr. Koger. I could not stop immediately and had to proceed passed the accident, but I turned around and came back.

Upon my return to the scene of the accident, I exited my vehicle and proceeded to assist the other deputies with Hamilton County and officers from Tunnel Hill and Catoosa County. I witnessed them attempting to remove Mr. Koger from his vehicle while Mr. Koger resisting.

I also noticed on the ground that there were two firearms which I made the other deputies at the scene aware of. They had Mr. Koger on the ground and were attempting to place him in handcuffs. I put my foot on Mr. Koger's right shoulder in order to assist the other deputies and to minimize his movements.

After the deputies put Mr. Koger in handcuffs, they took him to the back of a patrol vehicle. Mr. Koger continued to resist and officers present on scene began to hit and strike him. As soon as Sgt. Carson came on the scene, I was finished with my duties related to the pursuit and, as a traffic investigator, I then began working to assess the damage to the vehicles and assisting the other law enforcement agencies in assessment of damage to other vehicles.

I had no further interactions with Mr. Koger and I left the scene shortly thereafter.

7. Describe in detail what acts and events you or any other defendant or any other person, took on March 8, 2017, to ensure that Mr. Koger was promptly afforded medical treatment.

ANSWER: Objection. This interrogatory calls for speculation and knowledge not within my purview to speak to the actions of others. Without waiving this objection, this Defendant only has knowledge that an ambulance was

called for Mr. Koger and he was taken from the scene. My responsibilities after insuring that he was in handcuffs was to work as a traffic investigator and assess damage to the Hamilton County vehicles.

8. Have you ever been involved in any claim or proceeding involving a claim for excessive force or other constitutional violations and describe in detail the nature of each proceeding, the allegations against you in said proceeding and the outcome of said proceeding(s). [An objection based on undue burden should include how the request is unduly burdensome (i.e. number of hours, actual cost, etc...) and whether there is a less burdensome way to obtain this information.]

ANSWER: Objection. Any prior proceedings or claims have no relevance in this matter and are unlikely to lead to discoverable information. However, without waiving this objection, I was involved in a claim of excessive force approximately four (4) years ago in Hamilton County involving William D. Sholts vs. Shane Rominger, Todd Cook, Larry Posey, & Hamilton County, Tennessee Docket No. 15-C-761. I was cleared by Internal Affairs but the attorney representing Mr. Sholts sued me. It is my belief that Hamilton County settled that matter out of court.

9. Identify all communications between you and any other defendant, its agents, or its employees and any other person or entity concerning the events

involving Phillip Koger on March 8, 2017, including any communications before, during, or after any of the incidents described in the Second Amended Complaint.

ANSWER: **Objection. This interrogatory is overly broad and unduly burdensome to recall all conversations regarding this matter. Furthermore, this could implicate attorney/client privilege as I have had discussions with my attorneys about this incident.**

Without waiving this objection, I cannot recall all the people at the scene with whom I had a conversation regarding this matter. The dashcam video provided along with this discovery speaks for itself and will show to whom I spoke.

After this incident, Sgt. Gregory Carson has attempted to engage me in conversation regarding this matter on two separate occasions. I cannot remember the exact dates.

10. State whether or not, following the arrest of Phillip Koger on March 8, 2017, a statement, interview, report, or a stenographic, mechanical, electrical, audio, video, motion picture, photograph, or other recording, or transcription thereof, of you or any other individual present at the scene of the shooting, or of a statement made by you or any other individual present at the scene and contemporaneously recorded, has been secured from or taken of said individuals and, if so, for each such item, state the following:

- a. Name of the individual giving the statement, interview, report, or other recording related to the incident.

- b. Date, place, and time taken;
- c. Name and address of the person or persons connected with taking it;
- d. Names and addresses of all persons present at the time it was taken;
- e. Whether the statement was oral, written, shorthand, recorded, taped, or memorialized by other means;
- f. Whether or not the statement was signed; and
- g. Names and addresses of the persons or organizations under whose direction and upon whose behalf it was taken or made.

Please attach at request for Production of Document Number 3, an exact copy of the original of the statement, interview, report, film or tape referred to in this Interrogatory.

ANSWER: **Objection, on the grounds that this request mischaracterizes the incident at issue in this cause of action, alleging there was a shooting, when there was not a shooting involved in this incident. Without waiving said objection, Defendant refers to the Georgia Bureau of Investigation file. See Attached Exhibit A.**

11. Identify any person(s) who has possession or knowledge of any photographs, estimates, reports, statements, documents, drawings, imprints, letter(s) or any other tangible evidence which in any way relates or pertains to this

litigation, whether or not you intend to use the same. As a part of your identification describe what item each person so identified has or may have in that person's possession.

Please attach, at Request for Production of Documents Number 4, an exact copy of the original of any item identified in this Interrogatory.

ANSWER: **Objection. This interrogatory requests information which I do not have, and which is not within my purview and ability to receive. Without waiving this objection, there was an accident report created, but any other statements or report are not in my possession. In addition, please refer to the Georgia Bureau of Investigation file. See Attached Exhibit A.**

12. If you, your attorney, or anyone acting on your behalf has obtained a statement(s) in any form from any person(s) regarding any of the matters set forth in the complaint or your answer to the complaint, then as to each statement identify: (a) the person(s) from whom the statement(s) were taken and the person(s) who took the statement; (b) whether such statement(s) were written, preserved by recording device, by court reporter, by stenographer, or otherwise, and if so, the present location of each such recording, writing, or notes; and (c) the date and substance of each such statement.

Please attach, at Request for Production of Documents Number 5, an exact copy of the original of any item identified in this Interrogatory.

ANSWER:

Objection on the grounds that this request seeks information that is protected under the work product privilege. Without waiving said objection, Defendant refers to the statement given to the Georgia Bureau of Investigation file. See Attached Exhibit A.

13. Other than the defendant, to whom these interrogatories have been sent, identify anyone else (including the Plaintiff or any non-party) you claim is or may be at fault for the injury(s), damage, and loss sustained by the Plaintiff as alleged in the Second Amended Complaint. Include in your identification the percentage of fault you assign as to each person so identified and detail the reasons why you claim anyone else may be at fault for the injury(s), damage, and loss sustained by the Plaintiff as alleged in the Second Amended Complaint.

ANSWER:

Objection. This interrogatory calls for legal conclusions which are the providence of the court and the jury in this matter. Furthermore, discovery in this matter is still ongoing and, therefore, new people may become known to this defendant at a later date.

Without waiving this objection, this defendant places 100% of the fault for this incident on the plaintiff Phillip Koger. Mr. Koger ran from the police during a traffic stop and then resisted and assaulted other officers. His behavior and actions led to his injuries which were necessary in order to protect the officers that were on the scene.

In the alternative, the video in this matter shows other officers which may have had contact with the plaintiff. To the extent that video shows which officers had contact with the plaintiff, those officers would be at fault. This Defendant did not have any physical contact with the plaintiff but for placing his foot on

the plaintiff's shoulder to subdue him when he was on the ground. Therefore, this Defendant has no fault in this matter for any of the plaintiff's injuries.

14. State whether or not the location where Mr. Koger was arrested and assaulted were monitored by any surveillance and/or video camera, including any in-car video or audio recording device. If so, identify the type of surveillance and state whether any record was made of the assault on Phillip Koger, and if so, the location of such record or what disposition was made of said record.

Please attach, at Request for Production of Documents Number 6, an exact copy of the original of any item identified in this Interrogatory.

ANSWER: Defendant is not aware of any surveillance from a private party and, therefore, is not aware of any videos that demonstrate the subject matter of this suit.

However, this Defendants' dash camera did pick up the incident in this matter. See attached video.

15. Identify each and every expert with whom you have discussed any aspect of this case, whether or not the expert has been retained to render any advice, assistance, and/or testimony relative to the issues of this case and whether or not the expert was retained to advise or consult even though not contemplated to testify at trial.

ANSWER: **Objection.** It is too early in this matter to determine which experts, if any, will be used at trial in this matter. To the extent an expert is used, it will be disclosed in accordance with any scheduling order and/or Federal Rules of Civil Procedure.

16. As to each expert witness who is expected to give testimony, please state the following additional information:

- (a) The qualifications of the expert;
- (b) The subject matter on which the expert is expected to testify;
- (c) The substance of all facts and opinions about which the expert is or may be expected to testify;
- (d) A summary of the grounds relied upon by the expert in support of each opinion on which that expert may be expected to testify;
- (e) A list of all publications authored by the expert in the previous ten years;
- (f) A list of all other cases in which, during the previous four years, the expert testified as an expert in depositions, trials, or otherwise; and
- (g) A statement of the compensation to be paid for the study and/or testimony in the case.

[Please take notice that the plaintiffs will object to the introduction of any evidence from any expert offering evidence on the defendant's behalf who is not identified in the answer to this interrogatory.]

ANSWER: See response to Interrogatory No. 15.

17. Identify and describe any and all demonstrative evidence you intend to use at trial or is related to the allegations at issue in this lawsuit and describe how you contend that any disclose demonstrative evidence supports your case.

Please attach, at Request for Production of Documents Number 7, an exact copy of the original of any item identified in this Interrogatory.

ANSWER: **Objection. It is too early in this matter to identify what demonstrative evidence will be used at trial in this matter. To the extent any demonstrative evidence is used, such will be disclosed in accordance with the Scheduling Order, Local Rules of Practice and Federal Rules of Civil Procedure.**

18. List any and all items you intend to offer as exhibits at trial and describe each and explain how it supports your case.

Please attach, at Request for Production of Documents Number 8, an exact copy of the original of any item identified in this Interrogatory.

ANSWER: **Objection. It is too early in this matter to identify what demonstrative evidence will be used at trial in this matter. To the extent any demonstrative evidence is used, such will be disclosed in accordance with the Scheduling Order, Local Rules of Practice and Federal Rules of Civil Procedure.**

19. Identify each person with whom you have discussed this case in order to determine whether or not that person could offer an opinion or testimony as to any element of the case.

ANSWER: **Objection. It is too early in this matter to identify what demonstrative evidence will be used at trial in this matter. To the extent any demonstrative evidence is used, such will be disclosed in accordance with the Scheduling Order, Local Rules of Practice and Federal Rules of Civil Procedure.**

20. Identify all communications, not already identified, which you, your agent, or attorney, have had with any person(s), including any insurance company, their agents, employees, or attorneys, regarding any of the matters contained in any of the pleadings filed in this lawsuit.

Please attach, at Request for Production of Documents Number 9, an exact copy of the original of any item identified in this Interrogatory.

ANSWER: **Objection. This Interrogatory calls for discussions that will be protected by attorney/client privilege and the work product doctrine. Such will not be disclosed absent a court order.**

Without waiving this objection, this Defendant has not had any conversations with anyone outside of his attorneys.

21. Have you, your agent, your attorneys, insurance company or anyone on your behalf requested and/or received any information from any database or

information source or center concerning Mr. Koger. If so, please state the name, address and job title of the person in possession or control of this information, the date the information was ordered, and the name, address, job title of the person so ordering the information, and the name of the information source or center used.

Please attach, at Request for Production of Documents Number 10, an exact copy of the original of any item identified in this Interrogatory.

ANSWER: **There is nothing responsive to this interrogatory.**

22. Identify each person, not already identified, likely to have discoverable information about the claims and defenses in this case, even if you do not intend on calling that person as a witness.

ANSWER: **Please see responses to Interrogatories #2 and #5.**

23. Do you agree to supplement and/or amend your answers to these interrogatories and the requests for production of documents by timely (seasonably) serving plaintiff's counsel with supplemented/amended answer(s) and/or response(s)?

ANSWER: **Yes.**

REQUEST FOR PRODUCTION OF DOCUMENTS

1. Any pictorially preserved image, video tapes, slides, motion pictures, and audio recording, whether physical or electronic, of any person, place, or thing which relates to the matters set forth in any of the pleadings filed in this matter.

RESPONSE: See attached Exhibit A.

2. All documents relied upon or identified in answering plaintiff's first set of interrogatories.

RESPONSE: The pleadings filed and documents produced by other parties in this case, along with the attached Exhibit A.

3. All documents identified in Interrogatory Number 11 above. If no documents were identified, then all statements, recordings, transcripts, or reports taken of or secured from any individual present during any of the events described in the Second Amended Complaint in this matter.

RESPONSE: Please refer to the Georgia Bureau of Investigation file. In addition, see attached Exhibit A.

4. All documents identified in Interrogatory Number 12 above. If no documents were identified, then all photographs, estimates, reports, statements, documents, drawings, imprints, letter(s), or any other tangible evidence which in any way relates or pertains to this litigation, whether or not you intend to use the same at any stage in these proceedings.

RESPONSE: Please refer to the Georgia Bureau of Investigation file. In addition, see attached Exhibit A.

5. All documents identified in Interrogatory Number 13 above. If no documents were identified, then all statements, recordings, transcripts, or reports taken of or secured from any person.

RESPONSE: See attached Exhibit A.

6. All documents identified in Interrogatory Number 15 above. If no documents were identified, then all video or photographs depicting the pursuant, use of force, arrest, interrogation, or other interaction with Phillip Koger regarding the events of March 8, 2017, including the any search of his vehicle.

RESPONSE: Objection. To the extent an expert is used, such documents will be disclosed in accordance with any scheduling order and/or Federal Rules of Civil Procedure.

7. All documents identified in Interrogatory Number 18 above. If no documents were identified, then all demonstrative evidence you intend to use at trial.

RESPONSE: Objection. To the extent any demonstrative evidence is used, such documents will be disclosed in accordance with any scheduling order, Local Rules of Practice, and/or Federal Rules of Civil Procedure.

8. All documents identified in Interrogatory Number 19 above. If no documents were identified, then all items you intend to offer as exhibits at trial.

RESPONSE: **Objection. To the extent any demonstrative evidence is used, such documents will be disclosed in accordance with any scheduling order, Local Rules of Practice, and/or Federal Rules of Civil Procedure.**

9. All documents identified in Interrogatory Number 21 above. If no documents were identified, then all communications which you, your agent, or attorney, have had with any person(s) or entities, including any insurance company, their agents, employees, or attorneys, regarding any of the matters contained in any of the pleadings filed in this lawsuit.

RESPONSE: **A Westlaw Report was generated by a Hamilton County Attorney and is considered to be work product.**

10. All documents identified in Interrogatory Number 22 above. If no documents were identified, then information from any database or information source or center concerning Mr. Phillip Wayne Koger. This request includes criminal background checks, prior claim history, credit reports, and any similar data or information.

RESPONSE: **Defendant refers to the Georgia Bureau of Investigation file. In addition, see attached Exhibit A (*Bates Stamped Cook_000561-Cook_000692*).**

11. All accident or incident reports and investigations prepared as a result of the facts described in the Second Amended Complaint filed in this matter.

RESPONSE: Defendant refers to the Georgia Bureau of Investigation file. In addition, see attached Exhibit A (*Bates Stamped Cook_000561-Cook_000692*).

12. If you, your attorney, or anyone acting on your behalf has obtained a statement(s) in any form from any person(s) regarding any of the matters set forth in any of the pleadings in this case, then please produce a copy of each statement.

RESPONSE: N/A

13. If any party or anyone acting on behalf of any party made any representation, gave any statement, reported any admission, or made any other statement whatsoever to you, your agent, your attorney or representative, or to any third-party, then please produce a copy of each statement.

RESPONSE: Defendant refers to the Georgia Bureau of Investigation file. In addition, see attached Exhibit A (*Bates Stamped Cook_000561-Cook_000692*).

14. If any party or anyone acting on behalf of any party made any representation, gave any statement, reported any admission, or made any other statement whatsoever to you, your agent, your attorney or representative, or to any third-party, then with respect to each, please produce any document concerning the statement whether or not the document is written, or in the form of notes or otherwise. **[Please note that this request relates to, but is different from, the preceding request.]**

RESPONSE: Defendant refers to the Georgia Bureau of Investigation file. In addition, see Response to Request #13 and attached Exhibit A.

15. Any document, photograph, witness statement, federal act, state statute, local ordinance, or regulation of any agency, any written standard, or any other document or thing whatsoever which may corroborate or tend to support any part of Phillip Koger's claim or your defense to this action.

RESPONSE: Defendant refers to the Georgia Bureau of Investigation file. In addition, see Response to Request #13 and attached Exhibit A.

16. Any document, photograph, witness statement, federal act, state statute, local ordinance, or regulation of any agency, any written standard, or any other document or thing whatsoever which may corroborate or tend to support any part of any other party's claim or defense to this action.

RESPONSE: Defendant refers to the Georgia Bureau of Investigation file. In addition, see Response to Request #13 and attached Exhibit A.

17. Your personnel file covering your employment with the Hamilton County Sheriff's Department, including but not limited to any and all training certificates and disciplinary citations you received.

RESPONSE: Defendant refers to the Georgia Bureau of Investigation file. See attached Exhibit A (*Bates Stamped Cook_000001-Cook_000507*).

18. Any radio traffic, dispatch records, or audio/video recordings made by you, or any of your employees or agents in the hours leading up to, during, and after Mr. Koger's arrest on March 8, 2017.

RESPONSE: Defendant refers to the Georgia Bureau of Investigation file. In addition, see attached Exhibit A.

19. A copy of any use of force policy under which you were trained as an employee of Hamilton County Sheriff's Department.

RESPONSE: See attached Exhibit A (*Bates Stamped Cook_000508-Cook_000560*).

20. All documents, not already produced, which relate in any way to any matter contained in any pleadings filed in this matter.

RESPONSE: None in Defendant's possession.

VERIFICATION:

I, Todd Cook, state that the answers to the foregoing *Interrogatories* and the responses to the foregoing *Requests for Production of Documents* are true except as to those matters stated on information and belief, and as to those I believe them to be true to the best of my knowledge, information, and belief.



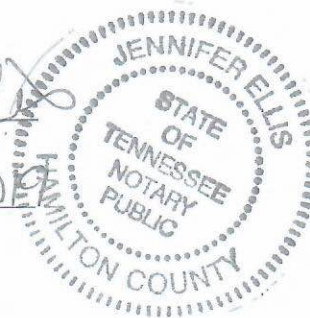
TODD COOK

STATE OF Tennessee)
)
COUNTY OF Hamilton)

Sworn to and subscribed before me this the 11th day of April, 2019.

Notary Public: Jennifer Ellis

My Commission Expires: 6-10-2019



Respectfully submitted,

**LEITNER, WILLIAMS, DOOLEY
& NAPOLITAN, PLLC**

By: /s/ James F. Exum
JAMES F. EXUM, GA BAR #954516
Attorneys for Defendant, Todd Cook
Tallan Building – Suite 500
200 W. M.L. King Blvd.
Chattanooga, TN 37402-2566
Phone: (423) 265-0214
Fax: (423) 266-5490

CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically submitted the foregoing Answers to Plaintiffs' First Set of Interrogatories and Request for Production of Documents to the Clerk of Court using the CM/ECF system which will automatically send electronic mail notification of such filing to counsel of record who are CM/ECF participants. Counsel of record are:

| | |
|---|---|
| <p>Luke A. Evans, Esq. Heather G. Parker, Esq. BULLOCK, FLY, HORNSBY & EVANS 302 North Spring Street PO Box 398 Murfreesboro, TN 37133-0398</p> <p>Christopher R. Stanford, Esq. Christina S. Stanford, Esq. THE STANFORD LAW FIRM, PLLC 103 West High Street Manchester, Tennessee 37355</p> <p><i>Attorneys for Plaintiff</i></p> | <p>Erin S. Corbett, Esq. BULLARD & WANGERIN, LLP 2960 Riverside Drive, Suite 280 P.O. Box 18107 Macon, Georgia 31209 <i>Local counsel for Plaintiff</i></p> <p>Gwendolyn D. Havlik, Esq. Stevan A. Miller, Esq. DREW ECKL & FARNHAM – ATL 303 Peachtree Street NE, Suite 3500 Atlanta, GA 30308 <i>Attorneys for Defendant Anthony Lawson</i></p> |
| <p>Dana K. Maine, Esq. FREEMAN MATHIS & GARY, LLP 100 Galleria Parkway Suite 1600 Atlanta, Georgia 30339-5948 (770) 818-0000 (telephone) (770) 937-9960 (facsimile)</p> | <p>Bryan H. Hoss, Esq. DAVIS & HOSS, P.C. 850 Fort Wood Street Chattanooga, TN 37403 <i>Attorney for Defendant Gregory Carson, individually</i></p> |

This 15th day of April, 2019.

/s/ James F. Exum